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FROM

Prof. A. B. Hart,
Cambridge.

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**PUBLICATIONS
OF THE
NORTH CAROLINA HISTORICAL COMMISSION**

**THE
PAPERS OF THOMAS RUFFIN**

**COLLECTED AND EDITED
BY
J. G. DE ROULHAC HAMILTON, PH.D.
ALUMNI PROFESSOR OF HISTORY IN THE
UNIVERSITY OF NORTH CAROLINA**

VOLUME IV

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1920**

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Prof. A. B. Hart, ✓
Cambridge.
i

THE NORTH CAROLINA HISTORICAL COMMISSION

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CALENDAR OF LETTERS

LETTERS WRITTEN BY THOMAS RUFFIN HERE PRINTED

<i>Place</i>	<i>Date</i>	<i>Written to</i>
Graham, N. C.	August, 1865....	Andrew Johnson
Graham, N. C.	Aug. 19, 1865....	Andrew Johnson
Hillsboro, N. C.	June 5, 1866....	Edward J. Hale
Hillsboro, N. C.	July 2, 1866....	Edward Conigland
Hillsboro, N. C.	July 14, 1866....	Edward Conigland
Hillsboro, N. C.	Aug. 6, 1866....	Edward Conigland
Hillsboro, N. C.	March 15, 1867....	David L. Swain
Hillsboro, N. C.	July 25, 1868....	Charles R. Thomas
Hillsboro, N. C.	July 8, 1869....	John K. Ruffin

LETTERS WRITTEN TO THOMAS RUFFIN HERE PRINTED

<i>Place</i>	<i>Date</i>	<i>Written by</i>
Raleigh, N. C.	Aug. 18, 1865....	Jonathan Worth
Raleigh, N. C.	Aug. 19, 1865....	Bartholomew F. Moore
Raleigh, N. C.	Aug. 24, 1865....	George W. Mordecai
Raleigh, N. C.	Aug. 26, 1865....	Bartholomew F. Moore
Hillsboro, N. C.	Aug. 27, 1865....	Paul C. Cameron
Hillsboro, N. C.	Sept. 4, 1865....	M. A. Curtis
Richmond, Va.	Sept. 14, 1865....	Lancaster & Co.
Hillsboro, N. C.	Sept. 15, 1865....	Paul C. Cameron
Chapel Hill, N. C.	Sept. 15, 1865....	David L. Swain
Salisbury, N. C.	Sept. 16, 1865....	Nathaniel Boyden
Raleigh, N. C.	Sept. 22, 1865....	Bartholomew F. Moore
Greensboro, N. C.	Sept. 25, 1865....	John A. Gilmer
Richmond, Va.	Sept. 26, 1865....	Lancaster & Co.
Hillsboro, N. C.	Sept. 27, 1865....	Paul C. Cameron
Hillsboro, N. C.	Sept. 27, 1865....	Adolphus W. Mangum
Hillsboro, N. C.	Oct. 4, 1865....	Paul C. Cameron
Greensboro, N. C.	Oct. 12, 1865....	John M. Morehead
Greensboro, N. C.	Oct. 25, 1865....	James Sloan
Chapel Hill, N. C.	Nov. 13, 1865....	David L. Swain
Richmond, Va.	Nov. 20, 1865....	Edmund Ruffin, Jr.
Hillsboro, N. C.	Nov. 20, 1865....	Paul C. Cameron
Chapel Hill, N. C.	Nov. 24, 1865....	David L. Swain
Hillsboro, N. C.	Nov. 27, 1865....	Paul C. Cameron
Hillsboro, N. C.	December, 1865....	Paul C. Cameron
Hallfax, N. C.	Dec. 4, 1865....	Edward Conigland
Poplar Mount, N. C.	Dec. 5, 1865....	Weldon N. Edwards
-----	Dec. 7, 1865....	R. M. Abbott
-----	Dec. 11, 1865....	Charles Manly
Poplar Hill, N. C.	Dec. 15, 1865....	Jesse Ruffin
Raleigh, N. C.	Jan. 18, 1866....	Jonathan Worth
Poplar Mount, N. C.	Jan. 24, 1866....	Weldon N. Edwards
Mocksville, N. C.	Feb. 16, 1866....	Elias Dodson
Raleigh, N. C.	March 12, 1866....	Walter Gwynn
Raleigh, N. C.	April 26, 1866....	Jonathan Worth
Baltimore, Md.	May 15, 1866....	D. M. Barringer

<i>Place</i>	<i>Date</i>	<i>Written by</i>
Raleigh, N. C.	May 16, 1866....	William H. Bagley
Greensboro, N. C.	May 18, 1866....	John M. Morehead
Raleigh, N. C.	May 21, 1866....	Charles Manly
Woodsdale, N. C.	June 3, 1866....	John W. Cunningham
Hillsboro, N. C.	June 4, 1866....	William A. Graham
Fayetteville, N. C.	June 8, 1866....	Edward J. Hale
Halifax, N. C.	June 26, 1866....	Edward Conigland
New Bern, N. C.	July 7, 1866....	John D. Whitford
Halifax, N. C.	July 11, 1866....	Edward Conigland
Greensboro, N. C.	July 16, 1866....	John M. Morehead
Halifax, N. C.	July 20, 1866....	Edward Conigland
Halifax, N. C.	July 21, 1866....	Edward Conigland
White Sulphur Springs, W. Va.	July 23, 1866....	John M. Morehead
Halifax, N. C.	July 28, 1866....	Edward Conigland
Halifax, N. C.	July 30, 1866....	Edward Conigland
Halifax, N. C.	Aug. 2, 1866....	Edward Conigland
Hillsboro, N. C.	Aug. 20, 1866....	Henry E. Colton
Rockbridge Alum Springs, Va.	Aug. 22, 1866....	J. L. Morehead
Halifax, N. C.	Aug. 27, 1866....	Edward Conigland
Raleigh, N. C.	Sept. 26, 1866....	Kemp P. Battle
Raleigh, N. C.	Oct. 1, 1866....	Kemp P. Battle
Poplar Mount, N. C.	Oct. 4, 1866....	Weldon N. Edwards
Poplar Mount, N. C.	Oct. 11, 1866....	Weldon N. Edwards
Yanceyville, N. C.	Nov. 3, 1866....	John Kerr
Washington, D. C.	Nov. 12, 1866....	E. Edwin Dudley
Poplar Mount, N. C.	Nov. 22, 1866....	Weldon N. Edwards
Raleigh, N. C.	Dec. 3, 1866....	Jonathan Worth
Raleigh, N. C.	Dec. 4, 1866....	Matthias E. Manly
Washington, D. C.	Dec. 5, 1866....	Reverdy Johnson
Poplar Mount, N. C.	Dec. 7, 1866....	Weldon N. Edwards
Raleigh, N. C.	Dec. 8, 1866....	David L. Swain
Raleigh, N. C.	Dec. 11, 1866....	Matthias E. Manly
Hillsboro, N. C.	Jan. 4, 1867....	William A. Graham
Raleigh, N. C.	Jan. 7, 1867....	Jonathan Worth
Company Shops, N. C.	Jan. 9, 1867....	F. A. Staggs
Chapel Hill, N. C.	Jan. 15, 1867....	David L. Swain
Raleigh, N. C.	Jan. 19, 1867....	Jonathan Worth
Raleigh, N. C.	Jan. 23, 1867....	Matthias E. Manly
Wilmington, N. C.	Jan. 26, 1867....	Alfred M. Waddell
Chapel Hill, N. C.	Feb. 6, 1867....	David L. Swain
Raleigh, N. C.	Feb. 9, 1867....	William H. Bagley
Edenton, N. C.	Feb. 22, 1867....	William A. Graham
Chapel Hill, N. C.	Feb. 25, 1867....	David L. Swain
Washington, D. C.	Feb. 26, 1867....	Montgomery Blair
Petersburg, Va.	Feb. 27, 1867....	Andrew Kevan & Co.
Raleigh, N. C.	March 3, 1867....	Jonathan Worth
Chapel Hill, N. C.	March 6, 1867....	David L. Swain
Poplar Mount, N. C.	March 15, 1867....	Weldon N. Edwards
Chapel Hill, N. C.	March 19, 1867....	David L. Swain
Raleigh, N. C.	March 23, 1867....	Jonathan Worth
Raleigh, N. C.	March 29, 1867....	Jonathan Worth
Rockingham, N. C.	April, 1867....	Walter F. Leak
Wilmington, N. C.	May 2, 1867....	George Patterson

<i>Place</i>	<i>Date</i>	<i>Written by</i>
Rockingham, N. C.	May 4, 1867....	Walter F. Leak
Rockingham, N. C.	May 15, 1867....	Walter F. Leak
Raleigh, N. C.	May 24, 1867....	Jonathan Worth
Chapel Hill, N. C.	June 2, 1867....	David L. Swain
Raleigh, N. C.	June 14, 1867....	Jonathan Worth
Charlotte, N. C.	June 19, 1867....	J. L. Morehead
Company Shops, N. C.	Aug. 16, 1867....	J. L. Morehead
Charlotte, N. C.	Aug. 27, 1867....	J. L. Morehead
Greensboro, N. C.	Oct. 27, 1867....	Julius A. Gray
Petersburg, Va.	Dec. 23, 1867....	William Brown
Charlotte, N. C.	Dec. 24, 1867....	J. L. Morehead
Salisbury, N. C.	Jan. 3, 1868....	William H. Bailey
Charlotte, N. C.	Jan. 4, 1868....	J. L. Morehead
Rockingham, N. C.	Jan. 20, 1868....	Walter F. Leak
Demopolis, Ala.	Jan. 29, 1868....	James H. Ruffin
Petersburg, Va.	Feb. 27, 1868....	William Mahone
Rockingham, N. C.	Feb. 29, 1868....	Walter F. Leak
Orange County, N. C.	March 15, 1868....	William N. Patterson
Rockingham, N. C.	March 17, 1868....	Walter F. Leak
Charlotte, N. C.	March 24, 1868....	J. L. Morehead
.....	March 25, 1868....	R. M. Abbott
New Bern, N. C.	April 19, 1868....	John D. Whitford
Charlotte, N. C.	April 20, 1868....	J. L. Morehead
New Bern, N. C.	May 15, 1868....	John D. Whitford
Rockingham, N. C.	May 15, 1868....	Walter F. Leak
.....	May 28, 1868....	Paul C. Cameron
New York, N. Y.	June 16, 1868....	J. L. Morehead
New York, N. Y.	June 19, 1868....	J. L. Morehead
Goldsboro, N. C.	June 27, 1868....	John D. Whitford
Danville, Va.	July 3, 1868....	Thomas Atkinson
Raleigh, N. C.	Aug. 15, 1868....	William J. Hawkins
Charlotte, N. C.	Aug. 18, 1868....	J. L. Morehead
San Francisco, Cal.	Sept. 18, 1868....	Thomas Ruffin Roulhac
Chapel Hill, N. C.	Sept. 21, 1868....	William H. Battle
Poplar Mount, N. C.	Sept. 21, 1868....	Weldon N. Edwards
Danville, Va.	Oct. 5, 1868....	W. T. Sutherlin
Chapel Hill, N. C.	Nov. 5, 1868....	William H. Battle
Rockingham, N. C.	Nov. 27, 1868....	Walter F. Leak
Rockingham, N. C.	Dec. 7, 1868....	Walter F. Leak
Rockingham, N. C.	Dec. 8, 1868....	Walter F. Leak
Graham, N. C.	Dec. 28, 1868....	Thomas Ruffin, Jr.
Raleigh, N. C.	Dec. 29, 1868....	George W. Mordecai
Poplar Mount, N. C.	Jan. 25, 1869....	Weldon N. Edwards
Young's Cross Roads, N. C.	Feb. 8, 1869....	R. A. Hamilton
Rockingham, N. C.	Feb. 19, 1869....	Walter F. Leak
Raleigh, N. C.	March 23, 1869....	John W. Graham
Memphis, Tenn.	July 5, 1869....	Kenneth Rayner
Raleigh, N. C.	Aug. 25, 1869....	Donald W. Bain
Salisbury, N. C.	Sept. 7, 1869....	Nathaniel Boyden
Raleigh, N. C.	Dec. 2, 1869....	John G. Williams

MISCELLANEOUS LETTERS HERE PRINTED

<i>Place</i>	<i>Date</i>	<i>Written by</i>
George W. Mordecai. Raleigh, N. C.	Oct. 3, 1865....	Paul C. Cameron
William A. Graham. Hillsboro, N. C.	May 18, 1866....	Jonathan Worth
B. F. Moore Raleigh, N. C.	Sept., 1866....	The People of Wake Co.
William A. Graham.....	Dec. 14, 1866....	Garrett Davis
James Buchanan .. Wheatland, Pa.	Feb. 14, 1867....	David L. Swain
George W. Mordecai. Raleigh, N. C.	Mar. 18, 1867....	William K. Ruffin
Jacob E. Cline Raleigh, N. C.	Mar. 19, 1868....	William K. Ruffin
Donald W. Bain ... Raleigh, N. C.	Dec. 29, 1868....	George W. Mordecai
Frank G. Ruffin ... Summer Hill, Va. ..	June 1, 1870....	Paul C. Cameron
John K. Ruffin Graham, N. C.	Aug. 23, 1870....	William K. Ruffin

MISCELLANEOUS DOCUMENTS HERE PRINTED

Clipping from the *Wilmington Daily Journal* of July 21, 1866.

Clipping from the *Wilmington Daily Journal* without date.

Clipping from the *Old North State* of July 24, 1866.

Clipping from the *Wilmington Daily Journal* of July 31, 1866.

Clipping from the *Sentinel* of July 30, 1866.

Clipping from the *Standard* of August 1, 1866.

Resolution sending commissioners to Washington, D. C., ratified December 14, 1866, with a copy of the commission issued to David L. Swain, Thomas Ruffin, and Nathaniel Boyden.

Memorial of the Trustees of the University of North Carolina to the General Assembly of North Carolina, 1867.

Opinion of Chief Justice Pearson in the Hughes Case.

Clipping from the *Wilmington Daily Journal* in the Hughes Case, January, 1867.

Constitutional argument in reply to Judge Ruffin.

Two newspaper clippings on the death of Judge Ruffin.

THE RUFFIN PAPERS

From Jonathan Worth.

TREASURY DEPT.

RALEIGH, Aug. 18th, 1865.

I am required to report to the Convention to sit in Oct. next the condition of the Sinking Fund. This I could do without specially calling upon the Comrs. of the Sinking Fund, but I would prefer that you report to me the State of the Fund, with any observations your Board might deem it expedient to submit, which I would lay before the Convention. I respectfully request, if it meet your approbation, that you convene your associates and submit such report by the 10th Sepr. next. I wish to have my reports all printed, ready to be laid on the tables of the members of the Convention on the 2nd Octr. next.

[Address: Graham, N. C.]

To Andrew Johnson.¹

To the President of the United States of America.

I Thomas Ruffin, a Citizen of North-Carolina resident in the County of Alamance in said State, do respectfully represent: That I am of the age of Seventy-eight (78) years, within a few weeks, am a native of the State of Virginia and resided therein until I was nineteen years old, except for about two years, during which I was pursuing my education at the College of Princeton in New Jersey, and have since the year 1806 lived in the Counties of Orange and Alamance in North-Carolina: That I married in this State and have had fourteen children, and that my wife is still living, aged seventy-one years and that four of our children still compose parts of our Family, namely, two grown daughters, who are unmarried, and two sons—of whom, one is decrepit having lost a limb near the hip, and is aged upwards of fifty years and not capable of pursuing any active calling for livelihood, and the other, aged forty-eight years nearly and blind for the last thirty years: Furthermore, that I was bred to the Profession of the law and was engaged actively and successfully in the practice of that Profession at

¹Rough Draft, a good deal altered in engrossing.

different periods of my life for about fifteen years altogether and for the residue of my life acted as a Judge of the Superior Courts of Law and Equity in said State at several times for about nine years in the whole and as a Judge or Chief Justice of the Supreme Court of North Carolina for upwards of twenty-five years, and until about the age of Seventy years I retired by resignation, with the view of seeking that rest and quiet appropriate to my age and inclination: That while a young man I served three years in the General Assembly during the last war with England and zealously sustained the prosecution of that war to its successful termination, and never afterwards held or desired any political position or trust, except as herein after mentioned, and did not take any active part or concern in parties, elections or measures—since, I was nearly all the time a Judge, and at that period it was generally deemed and by me felt to be an impropriety in one who held a Judicial office to mix in elections or otherwise to participate in faction, and, in fact, that during that whole time I seldom even voted, though deeply devoted in affection to the Constitutions of the State and of the United States and earnestly wishing the permanence of both and the welfare and prosperity, of both the State and Nation: That, however, as is well known—and to no one better than to yourself—parties and factions arose in the Country founded upon sectional interests, supposed to be incompatible, and upon legislation supposed and believed by many most intelligent and virtuous citizens of the Southern States to be directed and to operate against the interests and prosperity of the Southern States, and that there arose thereat violent heats and debates and extreme measures, which often and for a long course of time threatened civil commotions, by which some of the States would fly off from the Union or be kept in it by force. That to that remedy for the alleged wrongs, first in time, usually known as *Nullification* I was entirely and expressly opposed, because it brought the State and National authorities, as I conceived, unnecessarily into premature conflict, before exhausting the powers and efforts of reason among the People by trying further Elections and in the legislative Halls, and because, in the second place, of the absurdity—palpable to my mind—of the position, that a State could, at one and the same time, claim to be in the Union and also claim the right of denying operation within the State to the laws passed by the General Government: That so far as respects that particular form of redress the dispute was adjusted and all good men hoped for the time, that the Government and Nation would act and live harmoniously: But that, nevertheless, the grounds of the controversy were still found to exist, and bred hot political controversy in the Congress and the Country and ended in various acts of Legislation which involved, as was believed by the People of the South, the profits and property of more than one half of their substance, and could produce no less effects on their minds than the most gloomy apprehension of political degradation by force of the majority

against them and also of ruin in their private fortunes; and that, as a natural consequence, the Southern People, as Freemen were impelled to resist, as well as they could, the system of measures of which they thus complained, by agreement, by party combinations, by the ballot and if needful, by State action: Furthermore, I represent, that from the foundation of the Government, as is well known, to you, Sir, it was and up to this time has continued to be a point of dispute earnestly debated and contested between the most eminent Statesmen and the brightest Patriots of America, whether the States had or had not the power and right to withdraw from the Union for what they might deem just cause; involving their territories, their rights of local Sovereignty, and the *freedom* and property of their People; and that the men and parties holding the opposite sides of that question were alternately in and out of power during the whole progress of our national existence, without coming to any judicial or final settlement of it: That, without assuming to determine the matter or to set forth in argument the reasons on which my own opinion on it rests, it suffices my present purpose to say, that I held, for myself, that the Constitution of the United States created a *Government* and that by its terms it was a Government, to a certain extent, obligatory *on the States*, as well as on the individual citizens of the States, and by consequence, that *the States* could not deny its obligations on them and overthrow it more than the citizens themselves could do so by voluntary organizations: That, such being my own convictions, I was extremely desirous to come to such an accord by Amendments to the Constitution and other means of friendly accord as would heal the breaches between the People of the two sections of the Union and bring them once more together as one People, of one mind and mutual brotherly love; and therefore I gladly accepted the service in the *Peace Conference*, which met in Washington in February 1861, to which I was without my knowledge appointed by the General Assembly of this State, with unanimity, with instructions to advocate and obtain if possible, the adoption of certain measures, then pending before Congress, known as "*Crittenden's Resolutions*": which instructions I anxiously observed and obeyed to the utmost of my capacity in the Conference; and in support of that averment I confidently refer you to my Colleagues from this State and also not to mention others to the Hon. Thomas Ewing of Ohio and the Hon. Reverdy Johnson of Maryland, who served also in that body and were fully cognizant of my publick acts therein and of my private opinions upon the questions before the Conference, and will bear me witness, I think, that not a member was more devoted to peace than I was, or struggled more earnestly for it: That I deem further notice of the proceedings upon that occasion unnecessary, than to say, that to my sorrow our efforts at agreement and pacification proved ineffectual and that the angry feelings of the People of the different sections of the country became yet more inflamed than ever, and it

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became evident, that they could not or believed that they could not live together as one People, legislating for every part of them: That such was peculiarly the case with the People of North-Carolina, because at that time the States South of her had thrown off the Government of the United States and had confederated together under a new form of government, and very shortly afterwards Virginia by a Convention followed their example: That the effect of these events in this State was to produce a settled sense among the People here, that, as they must take part on one side or the other in the impending war, to which their interests, security and existence alike impelled them—the Union being then de facto broken up—to take sides with that portion of our late fellow citizens with whom they sympathised from neighborhood, from united action in the polemical controversies of many preceding years, in identity of interest in property, productions, customs and manners: And, consequently, that, as unanimity is essential to success, in Revolutions, so, in this case, that unanimity, which existed here probably, to a greater extent than ever prevailed in a civil war before, bore down before it all opposition which individuals could offer to it: That, for my own part, I made no effort to oppose any obstacle to it, since, although I could never accede to the doctrine of nullification, nor deny the authority of the Constitution over the States as well as over the citizens, yet I held the right of a whole People to change their form of Government by annulling one constitution or one alliance and forming another for themselves or in conjunction with others: in other words I believed in right of Revolution, in any People and the more especially of a People like ours, living under a popular form of Government: That although in February 1861 the People of this State decided by a large majority not to call a Convention because they hoped to preserve the Union, yet in April following by almost an Universal concurrence voted to call one, and I was, myself, without any canvass or solicitation on my part, sent from Alamance County as one of the members of it: That there was no mistaking the popular sentiment as to the purpose of having the Convention, namely, to dissolve the connection of North-Carolina with the United States and to become one of the Confederate States; and that accordingly I did, as the organ of my Constituents, concur with every other member of the Convention in voting for the ordinances of Secession from the United States and of accession to the Confederate States: That in so doing I am sure that I but faithfully complied with wishes, intentions and expectation of the People who elected me and also of the very great majority of the People of North-Carolina, and, furthermore, that I was then and am now entirely satisfied, that both the People of the County and State did solemnly believe, that they had just cause therefor which belief is founded on the facts of general expression of their feelings and opinions to that purpose by the People and the further fact, that no People, intelligent, staid and patriotic and theretofore greatly attached to their

national Institutions ever overthrew an existing government wantonly and capriciously and without fair and just reasons or a sober belief and conviction, that such reasons and just cause did exist: That, subsequently, in the Convention I gave my voice and vote for such military and financial measures as were deemed fit and proper for maintaining the war, then openly waged between the two People, and honestly desired the success of the cause to which North-Carolina was then a party. Furthermore, I submit, whether those acts as a Representative of a Free People by a free vote and in execution of their instructions can be deemed in law to be *Treason*, according to the frame of the Governments of the States and of the United States and, even if the affirmative be held by the Executive and Judicial Authorities of the Country. I submit further, whether one, for such acts, as I have stated on my part or the People who made me their agent and organ, ought to be subjected to the pains and penalties of *Treason*, either in person or property upon a point of such legal nicety, on which, as before mentioned, there has been from the birth of the Constitution to the termination of the war so much and such earnest debate amongst all classes of our Citizens in public and private Stations and also amongst foreign persons addicted to legal and political disquisition: That on this point, I do not fear to submit to the Executive reflection the suggestion that True Policy in my opinion forbids bringing that point to an issue to be tried before a Judge and Jury, who it may well be thought, would not willingly adjudge life and property to be forfeited on a ——— legis, when the purpose of the accused was to do no more than, according to the theory, of the Constitution, as understood by Most able and true men and by the vast masses of our other population they had a right to do: I furthermore represent that the Convention finally adjourned before the 17th day of July 1862, on which day the Act and Resolution were passed by Congress for the punishment of *Treason* and the Confiscation of the property of those, who should "*thereafter*" be guilty of "participating in the rebellion" then existing, which was the first enactment touching Confiscation: That without the word "*thereafter*" in those enactments the Construction of the provisions touching Confiscation would necessarily be referred to overt acts of rebellion subsequent to the statutes, under the provision of the Constitution, which forbids the passage of *ex post facto* laws: That, however, the act is direct and express, that confiscation shall only be worked by acts of voluntary participation in the levying or carrying on the War afterwards; and therefore could not arise upon any alleged *Treason* perpetrated by my participation in the proceedings in the Convention as before mentioned, since they were, all, prior to the 17th July 1862: That I am not aware, that since that time I have in any manner done any act, which would render me liable to any forfeitures or confiscation, as I have not served in any office or emolument civil or military of the Confederate States, nor in any place or trust under the State Govern-

ment, saving and except only in that of a Commissioner of the Sinking Fund, of North Carolina, to which I was appointed in conjunction with David L. Swain, President of the University and Weldon N. Edwards of Warren County by a Statute several years before the war, for the purpose of receiving and accumulating a Fund for the liquidation of the State debt; in which Capacity we have acted during the war as we did before it and with the same powers and to the same ends. A. Furthermore I represent, that I was the owner of more than one hundred slaves vested in me as my property by the laws of North Carolina—nearly the whole of whom were either derived by me from my Father or were born mine, [torn] investments in Publick and Corporate Stocks to a considerable [torn] which are now of little and most of them of no value—so that my losses, direct and indirect from the war, will amount to probably \$250,000: or more, and that the property left me is so reduced in market as to render it at the least doubtful, whether it could be assessed for taxation to the value of \$20,000.

So that, in conclusion, I submit, that, considering the course as herein detailed, the motives of my actions, my age, and long service of the State in high and responsible positions, the state and condition of my family and the amount of my pecuniary losses already incurred and the condition of the Country and the propriety of conciliating all classes of our People to the Government, I may fairly and without presumption ask, that, if those acts or any of them on my part constitute Treason, there may be granted to me a full and free Pardon therefor, or one on such terms as may seem right and proper.

A. That I.

*To Andrew Johnson.*¹

To the President of the United States of America.

Thomas Ruffin a citizen of North-Carolina resident in the County of Alamance, doth represent: That he is seventy eight (78) years of age with in a few weeks and that since the year 1806 he hath resided in the Counties of Orange and Alamance in said State—That he married in the County of Orange and that his wife is now living, aged seventy one years and that they have had a large family, namely, fourteen children, of whom four still reside with them, To wit, two daughters of full age and unmarried, and two Sons, one of whom is upwards of fifty years of age, and decrepit by reason of the loss of a limb just below the hip joint, and not capable of any active calling for a livelihood, and the other forty eight years of age and blind for the last thirty years; and that besides, he hath a large number of grand-children, who are orphans and

¹From the archives of the War Department of the United States.

infants and mostly dependent on him for nurture and education: That he was bred to the profession of the law and was called to the Bar in 1807, and that he was engaged actively and successfully in the practice of his profession, at different periods, for about fifteen years, in the whole and then served as Judge of the Superior Courts of Law and Courts of Equity at several times for about nine years and afterwards as a Judge or Chief Justice of the Supreme Court of North Carolina upwards of twenty-five years and until at about the age of seventy years he resigned with a view to retirement to private life in the hope of enjoying that rest and quiet appropriate to his age and feelings, to which a long life of assiduous labour in the service of the Country entitled him, as he thought: That during the last war with England he served for three years in the General Assembly, and afterwards had but little connexion with political or party matters; for it was at that period not deemed decent or proper that persons in Judicial Stations should participate in the feuds of parties or be busy in elections, and, in fact, he seldom even voted while he was on the Bench, though, certainly, he was not the less devoted in his affection for his Country and his wishes for her welfare and the permanence of her Institutions: That, as is well known, Sectional Interests and Jealousies arose at the North and South, supposed to be incompatible, on which were built up factions and parties in the Legislatures and the country at different epochs, attended by violent heats and debates and inflaming popular harangues, which often disquieted the publick mind and gave good and sensible men the utmost anxiety, lest the Union should be dissolved or be preserved by force, if at all: That, as to the remedy for the alleged wrongs to the South usually known as "Nullification," he was openly opposed, because as he conceived, it brought the State and National Authorities prematurely into conflict before exhausting the powers of reason and the effect of successive elections, and because of the absurdity as it appeared to him, of the position that a State could claim to be in the Union and one of its members and at the same time deny operation within it, to laws enacted by the General Government: That, so far as respects that particular form of redress the dispute was adjusted and all good men hoped, for the time at least, that the Government would act and the Nation live harmoniously: but, un-happily, the same contrariety of sectional interests and popular passions growing out of them, incited by demagogues desirous of power and by a licentious Press, were found to survive the supposed reconciliation, and gave rise to hot political controversies in and out of Congress, until alienation in feeling between the People of the different sections became established and as a consequence, the breaking up of the Government became a familiar thought to the nation and was openly and often spoken of in our highest legislative bodies and in private circles: That, as an example of this temper, he may refer first to that action of the Eastern States which constituted the "Hartford Convention" as it was called, whereby those

States sought to relieve themselves of the evils sustained from the war with England, which was declared and waged, as they alleged, by the Representatives from the more Southern States to the prejudice of those of New England: That, in like temper and from similar motives, when the People of the Southern States saw in the duties and other commercial regulations imposed by Congress and the Acts and omissions touching property in Slaves, and the unfriendly legislation of several of the States on the latter subject, a body of laws put into operation, which most materially affected their rights of property and in disregard of their feelings, they were most naturally roused to oppose them, and after long and ineffectual controversy were prepared to separate from a People with whom they could not, or supposed they could not, live in safety and peace: The idea of such separation was the more readily admitted into the popular mind because from the beginning of the Government—as is well known to you, Sir,—it was a point of dispute earnestly debated and contested between the most eminent publick writers, debaters and statesmen and the brightest patriots of America, Whether the States had or had not the power and right to withdraw from the Union for just cause, as it might seem to them; and, in point of fact, the men and parties holding the opposite sides of this question were alternately in and out of power during our whole national existence, as the popular majorities might from time to time fluctuate, without coming to any definite and final decision: That without assuming to state the argument on either side of this controversy, it suffices his present purpose to say shortly, that for himself, he held, that the Constitution of the United States created a *Government*, which for certain purposes was obligatory on the States as well as on the individual citizens, and therefore, that the States could not lawfully resist its operation on them more than the individuals could by voluntary combinations: Without condemning those who maintained the contrary, such was his opinion; and, therefore, with a devout desire for the restoration of the sound and good feeling of all the People of the Nation toward each other and the preservation of our form of Government and nationality, he gladly accepted service in *The Peace Conference* in February 1861, to which he was, without his knowledge, appointed by the Legislature with unanimity, with instructions to advocate the adoption of a system of measures of conciliation then pending before Congress, known as the "*Crittenden Resolutions*:" which instructions, he avers, he most faithfully and anxiously obeyed to the utmost of his ability; and in support of that averment he confidently refers to the known history of the time, to his colleagues in that Assembly and, particularly, to the *Hon: Thomas Corwin* of Ohio and the *Hon: Reverdy Johnson* of Maryland, who were members with him and are accessible to you—and were fully cognisant of his acts therein and his opinions and will, he thinks, bear witness, that no member of that Body made more earnest efforts for accommodation and

peace than he did: To his great grief those efforts of his own and of those two gentlemen and other true patriots proved unavailing; and instead of pacification the angry feelings of the People, by reason of that result and at the heels of a heated Presidential election were yet more inflamed than ever and it became evident, that they could not or believed they could not longer live together as one People: Such was peculiarly true as to the People of North-Carolina, because at that time the States to the South of her had thrown off the Government of the U. S. and confederated under a new form and shortly afterwards Virginia, adjoining her on the North, followed their example: Those events worked a settled sense among the People of North Carolina, that they must take part in the war, then impending, on one side or the other, and—as the Union was thus *de facto* broken up—impelled them to take sides with that portion of their late fellow citizens by whom they were then surrounded and with whom, from vicinage, from united action in former political controversies for many preceding years, from identity of interests in property and productions, as well as from customs and manners, they sympathized, and, therefore, with a unanimity greater, probably, than ever prevailed in a civil commotion before the People with one voice pronounced for a dissolution of the old Union and the contracting a new one with the other Confederates and over-bore all opposition which individuals could offer: For his own part though not acceding to the doctrine of Nullification and admitting the authority of the Constitution over the States as well as Citizens, he yet held the right of a whole people to change their form of Government by annulling one Constitution and forming another for themselves or in conjunction with others: in other words, he believed in the right of Revolution—"the sacred right of Revolution," as it has been well called—in any People and more especially a People, like ours, bred and living under a popular form of Government: Hence, he further represents, that in April 1861 an election was held for members of a Convention under a Statute for that purpose and the concurrence of the popular sentiments may be judged of from the fact, that every County was fully represented and that not one single delegate was chosen who did not give his voice for the Ordinances of Secession and Confederation: Of that Congress he was, without any canvass or solicitation chosen a member and he gave his voice with all the other members for those measures in compliance with the undoubted and settled purposes of his constituents and the other People of the State: who he was then and is now satisfied did solemnly believe, that they had just cause therefor, and without such a conviction they could never have been prevailed on to abandon Institutions, to which they had been so long and so deeply attached: That subsequently he did, as a matter of course, support in the Convention such military and financial measures as were deemed fit and proper for maintaining the cause to which North Carolina had thus become a party.—It is here submitted, whether for such acts the People, who made him

their organ, or he, as their representative, ought under our form of Government, to be subject to the pains and penalties of *Treason*, either in person or property; and whether, if legally liable thereto, it be not true, as well as the benignant policy of the Government, not to bring that point to Judicial decision before a Jury and Judge, but rather by a general amnesty bring back a conciliated People with such small means of livelihood as a protracted and most wasting war has left them, with renewed citizenship in this great country, with a patient submission to the losses they have incurred and quiet acquiescence in the laws under which they may have to live:—That for his own part he purposes to pass the short remnant of his days in unbroken retirement and certainly without any resistance in any form to the National authorities, and has attested to that purpose by having taken the Oath prescribed by your Proclamation; of which Oath a copy is herewith annexed.

He further represents, that the Convention finally adjourned before the passing of the Act and Resolution of Congress on the 17th day of July 1862 for the punishment of *Treason* and the Confiscation of the property of those persons, who should thereafter participate voluntarily in the rebellion then existing: He submits, that without the word “thereafter” the construction of the act, in respect to Confiscation, would confine its operation to such overt acts as occurred subsequent to the passage of the act, under the provision of the Constitution which forbids *ex post facto* laws: But by the word “hereafter” the enactment is express on that point. Therefore Confiscation can not result from any alleged *Treason* perpetrated by his participation in the proceedings of the Convention: And though he admits his desire of the success of the Confederacy in the war yet he is not aware, that since that time he has in any manner acted so as to render him liable to the confiscation of his property or other penalty or forfeiture: For, he never held any place or trust under the Confederate States, nor any under this State, except that of Trustee of the University, and one of three Commissioners of the Sinking Fund for accumulating of funds for the liquidation of the debts of the State: and, if these be services, which to render to his fellow citizens under any circumstances would render him liable they are not in this case, as the places were conferred on him long before the war and were exercised without remuneration: He further represents, that he was during and up to the close of the war the owner of more than one hundred Slaves, nearly all of whom were born his and raised by him; and furthermore had investments in Corporate and publick Stocks to a considerable amount which are now of little or no value in the market; so that his losses from the war will, directly or indirectly, amount probably, to the sum of Two hundred and fifty Thousand dollars or more and the residue of property still held by him has been so reduced in value as to render it at least doubtful, whether it could be fairly assessed for taxation to \$20,000:

In conclusion, then, he submits, that, considering the course of his life as herein set forth, his age, the motives for his actions, the condition of his family, his pecuniary losses already incurred, the state of the Country and the propriety of healing our political troubles by acts of Pardon and Oblivion, his be not a proper case for Executive interposition under the powers vested in the President by the Act of Congress: and therefore if any of his acts herein mentioned can be construed to amount to Treason, he asks for a full and free pardon therefor, or one on such other terms as may seem right and proper—and he will ever pray, etc.—

THOMAS RUFFIN

August 19th 1865

Graham—Alamance Co.

North Carolina

I herewith transmit a letter from B. F. Moore Esq (well known to the President) and also one from Jonathan Worth Esq. the Treasurer of North-Carolina to which I ask his reference and consideration.

THOMAS RUFFIN

[Endorsed:

Thomas Ruffin
Alamance County, N. C.

Petition for Pardon

13th Exception
Worth over \$20,000

EXECUTIVE OFFICE, N. C.

RALEIGH, Sept. 14 1865.

A pardon is respectfully recommended in this case

W. W. HOLDEN
Prov. Gov.]

[ENCLOSURE]

From Bartholomew F. Moore

RALEIGH, Aug. 19/65

Judge Ruffin

My dear Sir:

I was deeply touched at your asking me a few days since to give you a letter to be used in your application to the president of the U. States for a pardon, on account of your participation in the recent armed collision between the two sections of our Country. The request seemed preposterous.

When I came to the bar, about forty years ago, you were an eminent judge of the superior court of the State with an enviable reputation for your learning and integrity. Since then you have risen, by your merits alone, to the highest judicial station in the State, which you enjoyed with the universal satisfaction of the whole people, so long as you chose. After many years in consequence of your age, you again sought retirement from your labors. It was allowed but for a brief space, and you were again demanded to adorn the bench on which you had sat so many years; and when the pressure of age did not allow you sufficient physical strength to endure the labors of office, you retired again amid the universal regrets of the State.

Now, all this happened in my day and before my eyes, while I was obscurely plodding my way to the end of my natural life, an humble practitioner in the court where you presided. Is it wonderful, then, that I should be greatly moved at your request for such a favor at my hands, when now you have numbered nearly four score years?

I might fear, my dear Sir, that my habitual reverence for your eminent character, might unfit me to be an impartial adviser in matters which involved your welfare: but the experience of your own long life inspires me with hope that I may be just to my own integrity, while I venture to speak of a friend.

I can and do bear you witness, that you have carefully abstained from intermingling in the political excitement of the times, so long as you were on the bench. The uniform habit of the judges of the State was then a perfect abstinence from all participation in the politics of the day. There was no exception to the rule. And I know of no judge who more rigidly adhered to the rule than yourself. I knew enough, however, of your political sentiments, at all times previous to the year 1861, to say, with perfect confidence, that you were devotedly attached to the Union of the States; and when commissioners from this State were appointed to attend the Peace Conference at Washington, all union men (and no one more sincerely than yourself) were rejoiced that you were of the number. I have always believed, and such has been the unquestioned opinion of the people, that you labored arduously to restore harmony to the sections and prevent a disruption of the federal Union. Soon after your return from Washington, I had with you certainly one, and I think two, interviews on the subject of your mission; and I well remember with what anxiety you spoke upon the subject. Afterwards I saw you during the convention of May 1861, and held private and free conversation with you—From these I am satisfied that you regarded yourself as impelled to the act of advising revolution (you disclaimed its being secession) by the action of the surrounding States, and especially by that of Virginia, which left North Carolina the sole alternative between civil war and revolutionising with her sister States.

I am well satisfied that there is every disposition on your part to favor the restoration of the State to the Union, and civil liberty to the State. I am convinced that there is no purpose on your part to oppose the powers intrusted with these great objects, nor to throw any obstacles in their way—Such is my own determined purpose: And I regard this course as essential to our safety, happiness and peace in the future.

If my earnest wishes for your pardon, or the matter of this letter may avail you, at all, to effect that end, I pray you to use them to secure it. I know that the president will never have cause to regret the bestowal of his clemency on one, to whom his native State is so much indebted for the high reputation enjoyed by its people in the character of its judiciary and judicial records.

I am, my dear Sir,

most truly yours

B. F. MOORE

From George W. Mordecai.

RALEIGH 24 Aug. 1865.

I reached home on Monday night having been detained two days in Petersburg and regretted seriously that my unintentional delay prevented my having the pleasure of seeing you especially as I might have given you some useful information. You no doubt heard that I succeeded in procuring my pardon—which I did in a most fortunate manner, and for which I am chiefly indebted to my old friend Mr. Linton, who was almost the only acquaintance of old standing whom I found in Washington—and although he had been so long removed from public life as to prevent him from using any direct personal influence himself, he introduced me to a friend who was well acquainted with and had great influence with the President and through whom we succeeded. I regretted very much not having your and Mr. Cameron's papers with me, as I believe we could have carried all through as easily as our own. I went on rather unexpectedly and thought it most prudent to keep our movements to ourselves—when we meet I will give you all the particulars.

I see the Bishop has called a meeting of the Council on the second Wednesday in September. I take it for granted that you will be one of the delegates and I hope you will give us the pleasure of entertaining you during its session and any member of your family that may intend to accompany you please let me hear from you whether we may expect you and how many will come with you, so that we may calculate how many other guests we can accomodate.

got
pardon

I hope you and your family are all in the enjoyment of good health and as comfortable as the times will allow please present me most kindly to one and all of them.

My family are as well as when you left them and would desire their kind regards if they knew I was writing.

From Bartholomew F. Moore

RAL. '65 Aug. 26

I write merely to say, that, on my way to Halifax on Sunday, I met Gov. Holden at the Kittrell depot and told him of your petition and your anxiety. He said that he would forward it speedily, (so soon as he returned) with a recommendation for an *immediate* pardon. He spoke in flattering terms of your eminent services to the State and your exalted position as a citizen and jurist, and said he had always intended to expedite your case.

This I know, is pleasant news; and I take an early opportunity to let your hear it.

From Paul C. Cameron.

HILLSBORO, Saturday Aug. 27th, 65.

I write you by Our friend Dr. Curtis to say that if you will use my McNair property, that it shall be yours without charge—that it contains 135 acres, and if it be your purpose to move to Hillsboro it will suit you as well as any place about the town that can now be had. But if you are to occupy it should have two additional rooms and other improvements made, all of which I will try to do at once. On the place and near the House is a well equal to any in Orange. But if you will not take it I wish to know it and rent it or place some negroes on it to cultivate it.

I do not think this is a good time to sell any part of your property, but of this you are a better judge than I am. I would by no means sell the land west of the Alamance bridge road including your houses and ore lands, but keep up a small farm, in the hands of a good manager and from it obtain supplies of food butter and fruit—and to which you might make occasional visits. Please excuse me in thus volunteering in your matters. I hope to hear from you by Dr. Curtis. Not a word from Mr. Mordecai since you left us! . . .

From M. A. Curtis

HILLSBORO, Sept: 4th, [1865]

I was of opinion that you *had* answered my proposition to attend Council. You expressed such an aversion to going where you could not safely speak your mind upon topics likely to be discussed—an objection which I thought forcible and sufficient—that I did not like to urge you any farther upon the subject. It was on this account, that at the election of members of Council you were not put in nomination. Messrs. Cameron, Hill and Webb were elected. It was a piece of strange forgetfulness in me, that I did not mention this when I was at your house, the election having made a few days before.

After all, I can not but congratulate you, as I suppose you congratulate yourself, that you are not under a necessity to attend the meeting of Council. I wish I could stay away myself.

I am glad Bp. Atkinson is utterly opposed to our reunion with the Convention, without previous consultation with other Dioceses in the South.¹ He deprecates the independent action of Texas. You have seen in *The Intelligencer*, I suppose, what was done in that Diocese. Bp. Gregg writes me, that he has sent me the *Journal of Proceedings*, but it has never reached me. I think there will be a general disposition to return to the old relation, provided it can be done without being subjected to concessions and insult. There is a party in the North, egged on by outside influence, that would be glad to see us put under saws and harrows; but I hope there is charity enough left in the Church there, to withstand all such pressure.

Chas

From Lancaster and Company.

RICHMOND, VA., Sept. 14th, 1865.

We will thank you to furnish us any information in regard to the probable policy of your State in regard to the bonds issued for the completion of the Western No. Ca. Railroad after the secession of the State but authorized by act of Legislature passed previously.

[Address: Graham N. C.]

¹Bishop Atkinson, with Bishop Lay of Arkansas, went informally to the Episcopal General Convention at Philadelphia in October, 1865, to ascertain if any objectionable conditions would be imposed upon the Southern Church as a pre-requisite for reunion. They were invited to take seats in the convention and reunion was secured without serious difficulty and without embarrassment to the Southern Church.

From Paul C. Cameron.

PRIVATE

HILLSBORO, Friday Sep. 15th 65.

Our sister Cate tells me that she will visit you on tomorrow. I wish to say that I came up from Raleigh, this morning: that contrary to my expectations when I parted from you, I went to Raleigh on tuesday! On my return from your house I found here a letter from Mr. Mordecai urging me to come to Raleigh, that he wished to see *me*. Whilst in Raleigh, I made a visit to the Governor, told him that I understood that my Petition had not yet been sent on that it was of but little consequence to me how "I might be destroyed by the hounds or the Stag," that it was of the first importance to me to protect myself in Miss. and Ala. that I have a *pardon*. And I expected that he would place me in possession of my petition with *any endorsement* that he might think proper. He promised to let me have my petition on Wednesday at 5 o'clock. I went but he then postponed it to 5 o'clock on Thursday. He delivered then not only *my own* but *yours* with this "*endorsement*" "Executive office Raleigh No. Ca. Sep. 14th 1865. A Pardon is most respectfully requested in this case." "W. W. Holden Prov. Governor." After I had told him that my father in-law was an old man—that he was in poor health—that it was important to him and his family that he should be informed of, the result of his application he handed it to me with my own and that of Gov. Swain—all 3 endorsed in the *same words* I shall go to Chapel Hill this afternoon with all 3 of the Petitions and shall try and induce Gov. Swain to go on with his own yours and mine to have the matter closed up speedily. I hope to get him off and to this end have provided him with the proper funds. So that I hope in the next 15 days that we will have our Pardons under the proper signature of *Andrew the 2nd*. I did for you as I would have you do for me. Mr. Mordecai says it is all as it should be: and that it will meet your approval. I was more anxious for yours than *my own*. I shall be here again in the morning and hope to see you here tomorrow night on your way to Raleigh when I will be full in my report.

The Committee had not reported on the re-union but would report today—and all would be placed I think *optional* with the *Bishop*: and that Delegates would be elected to go with him to Philad'a or to Mobile as *he* might order. We are all well here but my daughter Maggie, and she is up and about. My wife with Mr. Geo. P. Collins at Fairintosh making Molasses—for the use of her family. I shall expect you tomorrow (Saturday) night. My sisters and Mr. M. will expect you on Monday *next* and I hope you may be able to go down. If required will go with you.

[P. S.] Dr. Warren is badly hurt from a R. R. Accident and will be long confined, I fear. Yours

P. C. C.

From David L. Swain.

CHAPEL HILL, 15. Sep. 1865.

Your esteemed favour of the 31 ult. reached me on Monday, that of the 11th inst. on Wednesday, and the letter which you refer as having written to me while at the North, is with various others, from various places, I know not where. I have deferred a reply to the two letters received, until this morning in the daily expectation of advices from Messrs. Battle, Moore and Worth, with all of whom I have been in correspondence on the subject of the proposed loan. By Judge Battle who went down on Monday, I notified these gentlemen of my readiness to proceed to New York at the shortest notice, if they upon consultation shall think it advisable for me to do so. I enclosed them two letters from Dr. Hawks one of the 14th, the other of the 28th Aug. both of which reached me the same day, giving the name of a firm in New York from whom he supposes the money can be obtained, if we can offer a satisfactory indemnity.

Your suggestion in relation to the war-debt is entirely new to me, and in my estimation, important and *valuable*. I used the latter word in its pecuniary sense. I do not concur with our friend Mr Moore in his views on repudiation, and am not without apprehension that their uncalled for and premature development may endanger his election, a result greatly to be deprecated. I hold his adversary Pennington in greater contempt if possible, than the reverend author of the Delphi papers,¹ whose revelations are quite as coherent, and sane, as the vaticinations of the Priestess of Appollo, whose office, he assumes to fill, which meant every thing, any thing or no thing as subsequent developments might require. Craven is as intelligent, intelligible and honest as the ancient oracle, Pennington the most servile sycophant, to which the reproachable era in which we live has given birth.

not a voice
on
war-debt

I have read your letters carefully and more than once, and must confess that if they exhibit any evidence of the decline of mental vigour, want of force or felicity of expression, which characterized your earlier days, I have failed to discover it. I find our relative positions, and opinions precisely the reverse of those of the Arch bishop of Grenada and his pupil as given in Gil Blas, with which I recollect to have been greatly amused many years ago. I may be mistaken with respect to Genl. Scott, because never having seen him before, I could only compare him with what I supposed him to have been in the prime of life. He is not as fleshy as he was some time ago, but is unwieldy and inert to a degree which is very convenient to him, and unpleasant to the

¹The *Delphi* Papers appeared in the *Standard* during July and August, 1865. It would appear from this letter that Rev. Braxton Craven's authorship of them was well known, but he has not been in later years credited with them.

beholder. Age has probably softened his temper and imparted a correspondant benevolence of expression to his countenance. He is the object of assiduous attention to throngs of admirers, male and female, and is not merely admired but greatly and generally beloved in the social circle. He has just published his autobiography in two volumes, which I did not buy because in the first place the price was \$5 a more inconvenient sum, at present than heretofore, and in the next the North American Review for April, which I happened to open at the same stall, characterized it as abounding in idle and empty gossip.

* I was more pleased with President Johnson than I expected to be, but my intercourse with him was too limited to justify the expression of my confident opinion. Brief as our intercourses were however, I had occasion to say to him, that I differed from him radically on his plan of reconstruction. When Governor Graham and myself visited Gen. Sherman as the bearers of propositions for a personal interview, and armistice *et cet*, the General stipulated without hesitation, that the Governor might continue in the undisturbed exercise of his functions that no one of his officers should be disturbed, that the General Assembly should meet at the time proposed, and provide for the call of a Convention. We urged that the same course, was the proper one to be taken then, and that at all events, whatever course might be pursued with respects to the Governor, the Assembly then in being should meet at the time proposed, and provide for the call of a Convention, that the Convention which framed and that which amended the State Constitution, that which declined the acceptance, and that which adopted the Federal Constitution, were all called by legislative bodies, and that North Carolinians were of all people most tenacious of established usages. He heard us patiently, but unyieldingly, insisted that as the General Government, was called to guarantee to each State a republican form of government that this purpose could be only effected in the existing state of things, by a reconstruction of the whole fabric of government, by the hands of loyal men, that the institutions were immortal, but the men who filled them had ceased to exist, the Ship of State was afloat, but must be re-manned. Gov. Holden who is a politician rather than a statesman, has not I suppose, clearly conceived, much less affected Mr. Johnson's purposes, in the manner and time contemplated. He was evidently very desirous that his native should be the model state, and outstrip all her contemporaries, in the race for reconstruction and reunion and I am satisfied that the course adopted by Gov. Perry of S. C. is much more nearly in accordance with the President's views, would have been warmly welcomed if it had been adopted here, and the State in that event would have been a member of the national union by the present time. Gov. Perry writes me that his interview with Mr. Johnson was a very satisfactory one, and that in the whole course of his life he has never met with any one whose opinions were so nearly identical with his own. The Convention in that State is now in session.

*7. History
View
+*

All the old officers were recognized at the outset and all persons whom he recommended for pardon, were regarded as eligible to the Convention.

I regret that the Supreme Court did not convene in June, and enter upon the discharge of their duties. The Executive, Legislative and Judicial Departments of the government are separate and distinct. The existence of the Constitution which makes them so is admitted. If the Judges choose to consider and confess themselves traitors, and retire from office, be it so. But is it competent for a governor *provisional or permanent* to depose them without trial or enquiry? Whence does he derive the authority to appoint successors? I understand that he tendered office to the Chief Justice which was declined. The autocrat of Russia can claim no higher prerogative.

Am I president of the University? I have never asked nor intended to ask the question. There has been a meeting of the Executive Committee with Governor Holden in the Chair, and I have been acting as President, without rebuke or disavowal during the last nine weeks.

Are you Chairman or I a Commissioner of the Sinking Fund? You remember the roll of "Revolutionary Documents" endorsed by you and entrusted to me for safe keeping. On my first visit to Raleigh after my return from West Point I carried it into the Executive Office, informed the Governor, that on the 13 March, in the presence of Gov. Vance and the Public Treasurer, the Commissioners of the Sinking Fund had current State Bonds, to the amount of \$2,362,500, that the Roll of Confederate Bonds had been committed to me, and requested him to accompany me to the Treasury Department and witness its delivery. He did so. I concur with you in opinion that we ought in due time to report our proceedings to the General Assembly, as Commissioners. If the Supreme Court had organized and proceeded to the trial of causes, whatever the military authorities might have done, I can scarcely suppose the Provisional Governor would have interposed.

Judge Reade may safely assume jurisdiction in criminal cases, if the military courts will permit him. Who else of the new appointees can? Sir Matthew Hale if living would not. The scores and hundreds of deposed justices of the peace may perchance, revive and their successors expire when Martial Law ceases and Civil Liberty returns. I forbear in my ordinary intercourse with society from entering into discussions of this character, because I earnestly desire a speedy return to the Union and to secure it am disposed for a brief interval to submit to any rule, and yield obedience to those who claim authority and have the power to enforce it.

The election for delegates to the Convention takes place on Thursday, the Convention will meet on the 2nd Oct. and the dawn of liberty of the press and freedom of speech cannot be very distant. Mr. Mordecai's card, and Gov. Vance's imprisonment as "the last man for the last dollar," will tell upon the public mind with irresistible effect. If

the Governor shall make no false step, he will as soon as his shackles shall be removed be a formidable competitor to anyone for the public favour.

In relation to the liability of the University to creditors, allow me to submit the following case for your consideration. By the Act of 1789, establishing the University (Sec. 2.) it is provided that the Trustees "shall be able and capable in law, to bargain, sell, grant, devise, alien or dispose of and convey and assure to the purchasers any such lands etc.," when the condition of the grant to them, or the will of the devisor does not forbid it."

The deeds under which the University holds the lands about Chapel Hill provide "That for and in consideration of the sum of four shillings to him in hand paid" etc. "and in further consideration of the many advantages that will redound to the County of Orange in consequence of its being fixed in the said county" etc. the bargainer conveys the tract "to the said Trustees and their successors forever for the benefit of the said University."

If I go on to New York and enter into negotiations there, in the present distrust of every thing at South, I must be prepared to submit to the closest scrutiny.

I am satisfied that pardons have been more sparingly granted in N. C. than elsewhere. I suppose however that as soon as the election for delegates is over a more liberal policy will prevail. The messenger who is to take this Hillsboro, and I must close without saying all I had intended on this subject.

Hon. Thomas Ruffin.

From Nathaniel Boyden.

PRESIDENT'S OFFICE
NORTH CAROLINA RAIL ROAD,
SALISBURY, Sept. 16. 1865.

Dear Sir

On my return from the Neuse I found your letter, of the instant enclosing your free pass over the road. I now enclose a free ticket during the term for which I have been elected to wit ended the next annual meeting of the stockholders in July which I trust you will accept and use whenever you have occasion to pass over any part of the road; as I think your public services richly merit this mark of respect and gratitude to one of our most faithful public servants. As to the principles of reorganizing our State I have been most forcibly struck with the legal inconsistencies involved, and so far as I am concerned I advised a different course, to wit that our legislature should have met and ordered a convention and all other things necessary to a reorganization and

placing the State in its proper status under the constitution, Laws and government of the United States. Indeed I always looked upon the ordinance of secession as an act of Rebellion and supposed that when or as soon as the Rebellion was put down, we were then restored to our legitimate and original position in the Union. ✱

The difficulty as to a double set of offices has constantly presented itself to me; but I suppose, that when the convention meets, it will take care to put this matter all right so that thereafter there shall be no difficulty in ascertaining who are the true and lawful officers of the government of the State of all grades high or low.

My kindest regards to all the members of your family.

With the highest respect your Obt. Servt.

NATHANIEL BOYDEN.

Hon Thomos Ruffin,
Alamance.

From Bartholomew F. Moore.

RALEIGH '65 Sep 22/65.

I have recd yours of 19th ult. I am amazed at the detention of your petition for pardon, after the expressions used by the Gov. Surely there must have been some oversight in the anarchy of promiscuous business with which the office is crowded. He was not at home, when he spoke to me the kind and complimentary words of which I wrote you. Still when discovered, that there was yet lingering the petition, and there was no suprise at it, is evidence that the delay had been predetermined. I am at a perfect loss to know whom to trust in public affairs. I shall seek to have no man's hurt and I believe there are very few who would hurt me. The world seems sensational, or postively dishonest: and whether the one or the other influence govern, the result is the same. I am tired of thinking on the best form of government. Pope said that govt. "best which is best administered." He is more than half right. I now hardly imagine a government so good as was that of ours, from my earliest childhood to the fatal disruption. It was the golden age of the Union: All that comes after is iron and dirt. The struggles for negro political equality are to be prominent and harassing, and the *attempted* check on free legislation of the State in regard to the blacks are to be ever before us, backed by a parcel of lowbred fanatics, abroad and among us. ✱

Night before last nine horses and mules were stolen from the stables of the citizens of the city, with the saddles and bridles. Doubtless the thieves were freedmen, who desire to return homeward with spoil, after having visited the capital on *business*! I desire once more to see the civil law restored completely to our land; and an efficient police, and

firm courts. The Military punishes a freedman thief with a mock punishment—which but encourages the rogue to higher deeds.

In regard to the matters concerning the sale of liquors etc. I have mentioned them to the Gov. and there seems to be no rule or method which we can advise as perfectly safe. At present every body brings liquor to this place without molestation or charge. There is no revenue officer who is empowered to interpose or to whom customs could be paid—and I suppose there can be no forfeiture as it cannot be the policy or object of the govt. to prevent sales of products.

The Rev. law itself declares, that the distiller shall first apply for license to distil; and a tax of \$2 be levied on each gallon distilled after 1 Jan. 1865. The duty is to be paid within five days after rendering an account of the quantity. There is no officer present, to whom an account can be rendered, and of course there can be no penalty, neither was there any to whom application could be made for license. The Gov. thinks, and so do I, that all will be right, if the distiller shall, when there is an officer sent among us, render his account. And I should not hesitate to sell. The act requires that the distiller shd. apply for license and give bond to report in writing, before distilling, the capacity etc. and that he will enter in a book from day to day, the number of gallons distilled, and will on certain days, 1st. 11th and 21st days, render to the assessor the number of gallons distilled etc. and that he will not sell or remove the same till the same be inspected, and will pay the tax imposed. No one has given a bond. In laying the tax all liquors are reduced to the standard of *first* proof, by Tralles hydrometer. Now it may not be amiss for those who sell to keep specimens so as to give a fair account.

I have been lately engaged in consolidating the State Constn. and have accomplished it so far as to bring all the parts into one mass properly separating the legislative Executive and judicial—and placing by themselves those declarations of general rules and provisions which are found in the constitution, keeping the Decl. of Rights to itself, or rather placing that in front and as part of the Constitution—making the emancipation of slaves 25th Sec.—omitting many of the disqualifications of sitting in the legislature, because they are all provided for by the 4th Art. 4th Sec. Amendments. I have inserted all the amendments passed by the convention of May '61, except that relating to taxation.

Is there any need to have any on the subject of taxation, except to declare that capitation tax shall be uniform? This may be essential to protect the negro.

If you should come to Raleigh shortly stay with me and let me show you my work, and ask your advice about many other matters. What language would you use in regard to the ratification of Judicial proceedings, contracts etc? I would like for you to turn your attention to this matter and give it a few days consideration and let me have the benefit of it.

From John A. Gilmer.

GREENSBORO N. C.

Sept 25th 1865.

Strange as it may seem, it is nevertheless true, the letter which enclosed the one I send to you never came to me until this morning.

I have been in a torpid since last April.

I trust that you and yours are in good cheer and health.

From Lancaster and Company.

RICHMOND, VA., Sept. 26th, 1865.

We are pleased to acknowledge the receipt of your highly esteemed favor of 20th inst, and thank you very much for the information contained in it. We regret to say there is no hope of obtaining anything else than Conf. money for deposits in our Banks. The Notes of the Bank of Virginia which are the first debts to be settled by it are worth only 30 cents on the dollar, and those of the Bank of the Commonwealth are worth nothing. The State of Va. paid no interest in July last, and it is hard to say when the payment of interest on reg^d. bonds will be resumed. Whenever it shall be done will cheerfully collect your interest without charge. Meantime we shall be always glad to serve you in our business.

[Address: Graham, N. C.]

From Paul C. Cameron.

HILLSBORO, Monday, Sep. 27th, 65.

Meeting with Mr. Wilkes of the R. Road at Raleigh on Monday I placed in his care a box of 2 doz. Philadelphia Ale—(the *best* that is in use) for you, which he promised to deliver at the station or send it to you by a servant from the shops. In one way or the other hope it is to hand and will do you good and give you appetite, I thought. I trust that with rain and cooler weather you will feel and be much better.

At Raleigh—I learnt that Gov. Swain had passed on to the North, hope soon to learn that you will be in possession of your *Pardon*, tho' I am doubtful as to my own. I hope my action in getting your

Pe[ti]tion into my possession and sending it on by the same hands with my own has your approval. Judge Manly went to Raleigh with me, he had been told by letter from the Gov. that he could not take his seat, but he told Judge M. to come down at the meeting of the Convention, that he would have his pardon at Raleigh by that time. My neighbor the Judge is gratified at his Election from Craven as he has been out of the county for 4 years and at all times neither ashamed or afraid to declare his position as a *Southern man*. On the other hand you will have seen that his brother the Chief Justice at *home* all the *time* and active in his opposition to his *section* is defeated by an unknown man! I heard no one at Raleigh express any regret at *his* defeat with the exception of B. F. Moore! Bishop Atkinson handed me a copy of his address to the Convention for you which is now sent you. I found him at Raleigh very much improved in health since the Convention. He had been joined by his wife, and they left Mr. Mordecai's on this day morning for Baltimore. I thought that he was a good deal disappointed that the Convention of the Church in Virginia had declined to send delegates to the Genl. Con. at Philadelphia. Mr. Mordecai speaks of returning to the Law and opening an office at Raleigh. He is to meet me tomorrow night (Thursday) at Fairintosh where I go to meet a butcher and sell all the sheep and cattle to get them out of the way of the negroes. Raleigh is over-run with negroes, 100 in jail, working them in large gangs on the street, and at R. R. Depots—not a day passes that we do not hear of some act of violence of some sort. I take it as granted that you do not intend to come to Hillsboro with your family. I shall try and settle George Collins somewhere in business—most likely in Memphis—and in charge of my property on the River. . . . We shall fail in cabbage turnips and potatoes—and bacon now worth 40 cents at Raleigh. This time year we shall have nothing to sell and nothing to eat.

*From Adolphus W. Mangum.*¹

Sept. 27th, 1865.

Tho' I have not the honor to know you personally, I venture to call upon you, (as I have done upon other distinguished men in and out of the State) to assist me in my effort to procure letters, speeches, incidents of a personal social, professional or political character etc. bearing upon the life and character of the late Hon. Willie P. Mangum. His family submit to me his private documents and all the papers they have that will aid me in my purpose, being anxious for the accomplishment of my task.

¹Rev. A. W. Mangum, a Methodist minister, later, and for many years, a professor in the University of North Carolina.

Judge Caldwell (who by the way, made kind and anxious inquiries about your welfare last week) has already sent me his offering, and I hope you also will freely tender such a tribute to departed Worth.

Please send what you can contribute to my address to Hillsboro, N. C., by mail or otherwise—as I can get it soon from the Post Office at that place.

Address

Rev. A. W. Mangum
Hillsboro N. C.

From Paul C. Cameron.

HILLSBORO Wednesday, Oct. 4th, 65.

The enclosed letter from Mr. Mordecai received this morning tells us that Gov. Swain is in possession of *Our Pardons*. I am glad to get mine for I feel that my hands are untied and that I may go to work to do what is *best in my affairs* without fear of the long arm of the Freedmen's Bureau. And this I told Gov. Swain was an important consideration with both of us. I was very glad to learn that your health is so much improved. Browne tells me so—and others—do take care of yourself—and let me suggest that you put on your winter flannel, thick shoes and *live free*. At Fairintosh and Stagville all are going to the devil or dogs as fast as they can—wont work—and destroying stock—out houses, enclosures! No reliance can be placed in any contract—no man can purchase large teams of mules with any confidence that he can use them successfully. Nothing but want will bring them to their senses. Rent out all of your land except what you have west of the Alamance Bridge Road, keep no negro that will not come up to your wishes as to duty. We are all well and kept close to duty as we are very poor in house servants. It is said that the white servants introduced in Va. are giving satisfaction at Bruns. and others places. Just now we have Miss May Rostand and Mary Pettigrew on a visit to us—very pleasant visitors and give us no anxiety in our present condition. I dont hear from Ala. or Miss. . . . If you are to come to Hillsboro with your family you should *act soon*. I thank God that my *family* is just where they are, at least not at our *old Home*. The Winter is to be beyond all question a season of no little anxiety to all in exposed situations. The questions now being disputed at the Negro Convention at Raleigh will I think bring something to a *head* at an early day. You will have seen how small a spark will start a city like Memphis to action—"the tripping up of a little white boy on the side walk by a

negro." We are all glad to learn that May Clack is safely the mother of her 3rd son—my "best wishes" for her and her sincerely esteemed husband.

To Mrs. Ruffin and the entire household tender my best wishes—and the greetings of our entire family.

[ENCLOSURE]

From George W. Mordecai.

RALEIGH, 3d. Oct. 1865.

P. C. Cameron Esqr.

My dear Sir.

I am truly gratified at being the medium of information to you that your pardon and that of Judge Ruffin are in Gov. Swain's hands as he informs me by letter just received, please communicate to the Judge immediately.

Mr. Crawford got down safe with his sheep and Cattle except three of the latter which escaped. We are indebted to you for a fine piece of mutton which he delivered to us yesterday. All at home as usual. Convention organized yesterday. E. G. Reade Prest. Love to all.

Yours truly

GEO. W. MORDECAI.

From John M. Morehead.

GREENSBORO 12 Oct 1865.

Your favor was duly received by Peter.

I doubt whether Peter's anxiety to hear from his father was as great as to see what the prospect was for good wages and nothing to do about Greensboro.

I have not seen him this morning and do not know what success he met with in looking around on yesterday.

I got home yesterday from Leaksville by R. Road, and while lying down to rest a sore leg that has pestered me by fever falling into it about the time my health improved, Peter came in and we had a long Talk seems rather loth to leave you, but thinks he can do better. I advised him strongly to remain where he is, for another year at least as free negroes will find great difficulty in getting homes for the next;

year— while conversing with me another free negro came to get work and wanted a good price, because he said, he had to pay \$5 per month for a small room, rent, and had to pay 35cts per lb. for bacon and other things according and he did not know what poor free negroes were to do to live. I dismissed him, and after he left—I said to Peter you see some of the difficulties you will have to encounter if you leave your present home.

He seemed inclined to leave because your other negroes have left—and it is the inclination of *all* to leave their former masters. And I think it best they should do so—for they will be no account to their former owners.

My general health is greatly improved but I am sorry to say my wife's has not. I fear she will never be again permanently well. I hope to get this fever out of my leg, for I should feel pretty mortified to be afflicted with a permanent sore leg. It now impedes my locomotion considerably indeed the Drs. advise me to lie on it most of the time.

We shall always be glad to see you or yours in passing through our town—but we have no one now to attend the arrival of the cars. Call and stay with us going or returning.

From James Sloan.

GREENSBORO N. C.

Octr. 25th 1865.

The combined energy of your three friends entrusted with the Coms. to purchase one mule for you, has signally failed.

Nothing offered or sold that would have suited you could have been purchased for less than 125 Dolls.

Your funds 60 Dols is in my possession and will be held subject to your orders.

Hon. Thos. Ruffin.

From David L. Swain.

CHAPEL HILL 13 Nov. 1865.

My dear Sir,

I did not write to you while at the North, because nothing occurred that required immediate communication and my time was very fully occupied. I have not written since my return because I did not know

where to begin or when or how to end. My trip was in the main a pleasant one. I met with many old friends at every stage in my journey, and now and then was brought in contact with literary gentlemen, with whom I have maintained correspondence on historical and other topics, but have never met before.

Among them were Mr. Lossing the author of the Pictorial Field Book of the Revolution, Dr. Cohen the antiquary of Balt. with whom the history of paper money, and the arrangements of a cabinet of specimens of French Assignats, of continental money and the emissions of the United States, and the collection of autographs has been the labour of many years. I received from him by express, yesterday two large engravings, one representing *fac similes* of French, the other of American issues of paper money. He is now engaged in preparing one of Confederate and confederate state emissions, With Dr. Barnard for 15 years Professor in the University of Alabama, President of the University of Mississippi, and now President of Columbia College one of the oldest and at present I believe the best endowed institutes in America. Dr. Leiber who left S. C. for the same reasons that Dr. B. abandoned Mississippi, is one of his Professors. I found at his table Dr. Henry Lee of the Smithsonian Institute whose acquaintance I made at Princeton in 1842, and who is to me the most interesting of all the literary celebrities whom I encountered. I had two interviews with Wm. B. Astor, now in his 73d year, a tall athletic man who says he rides on horse-back with as much ease and pleasure as in early life, and is as sedulously devoted to business as his father was before him, and his son who seems to be his cashier promises to be when he is gone. But I got no money or the promise of any, from any quarter and I tried very hard upon many, beginning with President Johnson and Secretary Seward.

I had two interviews with Mr. Johnson, the first to ask for and the second to receive pardons. The first was brief, the last for the present times, long familiar and interesting, but I must reserve particulars until we meet. Such crowds of suppliants for pardon, for place *et cet*, now throng the white house that a man is esteemed fortunate who at the end of three or four hours, is permitted to approach the President and speak with him two or three minutes. He acquits himself in these hurried colloquies, with great tact. It requires great readiness and must be very trying to mind and body. He receives them standing and from 10 to 3, his physical and mental endurance is severely taxed.

"Favors to few, to all he smiles extends
Oft he rejects, but never once offends."

It is Pope I believe, who speaks thus of a lady. I ask pardon of his shade, for applying it to a taylor's apprentice, who remembers and appreciates correctly all whom he met in his boyhood, but who did not

make such an impression on those more highly favored by fortune, as to be remembered by any one. Even the benevolent gentleman whose manner of reading captivated his attention and stimulated his youthful ambition to learn to read, gave him the book, (the American Speaker) in which he learned his letters, to spell and to read, seems to retain no distant remembrance of him. Harry (Col. Polk's old carriage driver), gave the most satisfactory account I have received from any one of Jacob and Andrew Johnson.

When I began to write it was rather dark, and I had a page before I perceived that I had my paper inverted, and that it was necessary to mark the pages, that the chirography, not altogether as legible as engraving might present itself in proper order.

My principal object in writing is to enable you to arrange the meeting of the Commissioners of the Sinking Fund at such a time as may enable me to attend it. Our examinations will close on Saturday 2 Dec. If the weather will admit of travelling I hope to be in Tarboro on Sunday, go to Faulkland on Monday, and return to Raleigh by the end of the week. You have probably seen the strictures in the Standard upon the conduct of Mr. Worth, in inducing the Commissioners to sink a large amount of old six per cents, by investments in worthless rebellion issues. Genl. Patterson's report and resolutions adopted by the last General Assembly will be found particularly opportune. He is not merely a gentleman whose personal integrity is above suspicion, but he has established reputation as a skilful financier, and is politically allied with the dominant party. I say the *dominant party* upon the supposal that the Provisional Governor, has succeeded in the election, but which from present indications is by no means certain.

I sent you a pamphlet by Mr. Graham, given to me for you by Mr. Atto. General Speed who impressed me more favourably as a man than a lawyer. He spoke in very complimentary terms of your judicial career, and seemed very much disposed to be kind to both of us.

Excuse the haste in which I write and Believe me

Very sincerely Your friend

D. L. SWAIN.

From Edmund Ruffin, Jr.

RICHMOND—Nov. 20th 1865.

Except for the delay at Greensboro and Danville, we had a pleasant journey home, reaching there about sunset the day after we left you. We found all well. Next morning bright and early I started for Beechwood and Hanover. They were just about closing the wheat opera-

tions at both places. We sowed 100 Bs. at the former and 60 Bs. at the latter, only one half of what we hoped to achieve when we started.

My building operations at both places progress so slowly that I am out of all patience and out of all hope of being able to move this side of Xmas, and put off 'till then, a removal is next to impossible before the spring, which will keep us unsettled and uncomfortable for another 12 months. All of this inconvenience and expense I am put to, because the workmen engaged will not work. I made a strenuous effort to get these jobs done before this unfavorable period of the year arrived and have utterly failed simply from their laziness.

I expect to get back to Amelia within a day or two. I am anxious to hear the result of your appearance before the tribunal at Hillsboro¹ and how you are generally getting on. My blood fires up every time I think of it—and yours is but one of many similiar cases occurring around me every day. I have as yet taken no steps to employ white labor, having no accommodations for it, and have only engaged 2 blacks for next year and they may not come to *taw*.

Remember me most affy. to Mrs. R. and every member of yr. household. If Cousin Alice is with you tell her how much we regret missing her. Enclosed I send you the \$30. I owe for express charge on bonds and cotton cloth—

From Paul C. Cameron.

HILLSBORO Monday, Nov. 20 '65.

* * * * *

My wife passed 3 days at Fairntosh this week. She comes back sick of the conduct of the negroes—she says without hesitation—drive all off—get white tenants on any terms—have peace if you have no money—a yankee officer refused to let them have a 3rd of the crop on the *Stagville* farm by reason of their bad conduct, and sent them off with a 4th, and ordered some to leave the place for plundering it. He was sent up from Raleigh and was at Fairntosh with my wife and says he is a well disposed man. My great calamity is that when they leave my places they just find a home 3 or 4 miles off and are on the road all the time. I do not see that we should attempt to make any scuffle to live here, but get off with what we can and do the best we can.

We have felt anxious to hear from Thomas as you reported him very poorly with a very sore throat, but as you say nothing about him

¹Judge Ruffin had been forced by the agent of the Freedmen's Bureau to report his good behavior at frequent intervals. This was quite a common practice, designed primarily to elevate the agent's importance in the eyes of the negroes.

in your letter regard him as well or much better. If you do not see the papers, it is settled that Worth will be Gov. by 7 or 10,000, that Stubbs, Clark, Fuller, Turner, Brown, Walkup or Ramsey and Jones are the Congressmen. No one knows what is the complexion of the Legislature—Holden or Worth!

We are all pretty well—hard at work—and likely so to continue as long as we live. To each and to all tender our most affectionate wishes and greetings.

From David L. Swain.

CHAPEL HILL, 24, Nov. 1865.

Your letter of the 18th received yesterday.

Gov. Manly has not yet advertised the time of the annual meeting of the Trustees. The 10th Dec. is the time ordinarily appointed, but as that date occurs this year on Sunday, Monday the 11th will probably be the day. I expect to spend Sunday the 3d with my friend J. S. Battle, to go Falkland the next day and return to Raleigh by the close of the week. From the 11th to the 17 therefore will be the most *convenient* time for me, but I will attend at any time during the session of Assembly that may be necessary.

Has the question presented itself for your consideration, whether in as much as the 6 per cent bonds were disposed of by the Pub. Treasurer to supply the means of carrying on the war, they are not included in the Ordinance of Repudiation? Mr. Cameron supplied me with the means of going to Washington in advance, and I have not seen him since my return. Give yourself no concern about the matter until he and I have an adjustment, and not then unless you shall be notified.

I am exceedingly anxious to have you at the meeting of the Board and cannot reconcile myself to the idea of parting with you at the close, and if the Sinking Fund is to survive the War, I would gladly continue a member, if it served no other purpose than to bring Mr. Edwards you and myself together, two or three times a year. I had a very kind letter from him a few days since. He is 78 you 79, and I who was a boy when you and he were gentlemen of established reputation, will be 65 on the 4th Jan. next.

Mr. Johnson is peremptory in his demands that the seceding states shall adopt several measures he proposes, in order that he may coerce the eastern radicals to admit our delegates to Congress. I think this is apparent from his correspondence with Gov. Perry who is much more a favorite with him than our Provisional Governor, who is pursuing a course that will soon render his true character as well known at the North as at home.

I enclose a slip cut from the New York World of the 18th. Though written by a political opponent it gives the best description of the President's personal appearance, manners, and mode of expression, that I have seen, in all which he contrasts most favorably with Mr. Seward and the Atto. General. The zeal and earnestness with [which] Mr. Johnson advocates, and presses his scheme of reconstruction are very faithfully portrayed, and I have no doubt that Mr. Seward and the other members of the Cabinet, will be moulded to his iron will.

— Outrageous a radical as Gov. Dennison (the P. M. G.) is, he must either bend or break.

Judge Ruffin.

From Paul C. Cameron.

HILLSBORO, Monday, Nov. 27th, '65.

* * * * *

We are all pretty well, but I am obliged to say that we do not improve in spirit purpose or comfort. We are a most terribly punished people and the worst not yet to fear. I have prepared an advertisement offering all my property for sale and would gladly get off with *a half of its value* to some new field of industry and hope. But I see no chance to make a sale and my brother and sisters' affairs I must not give up nor can they go with me. I am glad to learn that you have some aid on your farms in the imported labourers. That seems to me to be the *best step* that can be taken if we propose to hold and cultivate our lands. Our friend Mr Patterson is now with us to pass a week or so with us and gather up his clothes sermons and effects and return to Wilmington in which he is to make home as an assistant to Mr. Watson in St. James.

We have no local news. We are all trying to make ourselves comfortable by providing fire wood, and adjusting our household for winter.

We think and speak often of you and all with you and regret that we are not nearer to each other. Friendship and affection make up a large part of the wealth that is left us. God bless you and all yours.

From Paul C. Cameron.

HILLSBORO, tuesday night. [December (circa). 1865.]

My dear Judge.

My good wife proposes to send Will Roulhac up by tonight's train with a letter that she had prepared for the mail; indeed it had been sent to the office—but recalled it, that she might send it, by a

more certain conveyance. He now desires me to write to endorse her wishes and to express mine. You have long known my views on a *Country Home* at *this* time: nothing could induce me to occupy one with my *family*—reasons need not be repeated. In the *hope* that I might induce you to consult *your own* comfort in part, but especially that of *Mrs. Ruffin* and *Patty* I was prompted to day to purchase the Ho. and lot of Mrs. Hill and requested Anne to tender it to you. In this I was prompted *only* by a wish to *increase* the comfort of each one of your household by a residence here.

I am sure you will find it a very comfortable House with snug rooms (4 on the first and 3 on the upper) two offices in the yard—one of two rooms with a piazza—one with one room—kitchen close at the door—with one of the *very best* wells of water with a good pump and Mill House attached—ample Stables and corn House and garden. My wife has said all along that no place about H. was so well suited to your wants as this and I acted on her judgment in the purchase of the property at auction to day. It is now placed by us at your disposal so long as you wish it. Had I the benefit of a personal interview I could state to you considerations that it seems to me should settle the question. Many of these considerations have been discussed between us and nearly all have no doubt occurred to you with full force. I will now just ask a single question—Who has so helpless a family as yourself! and your life far advanced and in delicate health! Without labour to conduct a farm or to provide the comforts of a country home, I do not see what can induce you to remain. I have no wish to press this improperly and seek only the comfort of those that I love. Your son Tom will so dispose of your lands and mills in Alamance as to provide you with a comfortable liveing here and with the aid of Browne and myself we will undertake to have you all settled here in 10 days without an effort on your part. You and Mrs. Ruffin and Patty might come down at any time and take up your quarters with us until all should be set in order for you at Mrs. Hills. *Here* you will be surrounded by an efficient guard of granddaughters who can come in aid to Grandmother and Aunt Patty in seasons of sickness, and in the absence of “Help” that will make many a bright hour for you all this long and dreary winter. You will I hope yield in this to the wishes of your friends and children. You will have heard perhaps of the very sudden deaths of *two old friends*—Capt. Alfred Jones and P. H. Winston. With best affection for all,

Yours truly

P. C. CAMERON.

*From Edward Conigland.*¹

HALIFAX N. C. Dec. 4th, 1865.

Hon. Thos. Ruffin:

Dear Sir:

I had the honor to receive your letter of the 28th ult. by Saturday's mail, acknowledging the receipt of two speeches delivered by me in the Convention, one on the "War debt" of the State, and one on the ordinance "Vacating the State offices etc."

When I mailed to you the speeches in question, I was, I confess, most anxious that they should meet with your approval, but I had no reason to expect more than a verbal intimation to that effect through some mutual friend. Your letter, of itself, sufficiently repays me for the time and labour devoted to the Convention. I shall carefully preserve it, and I beg to assure you that I value it more highly than all the other communications extended to me in reference to the same matters.

I am exceedingly obliged by the comments you so kindly make, and hope to profit by them should any opportunity to discuss the same matters hereafter arise. You are certainly right in both the suggestions made by you in the War debt speech. Where the bonds still remain in the hands of the original, it is clear that the "scaling" should be based on the price paid by him therefor, but when they have passed into second or third hands, a different rule might be adopted, and is suggested by some. Mr. Winston's plan is to scale on the sum paid by the last holder, and, in this, I cannot see any injustice. The original holder having parted with them, at a reduced price, I do not know any means by which he could be indemnified for any loss he may have sustained, while to estimate them at their original value, in the hands of the last holder, might be offering a premium to speculation. This does not, it seems to me, at all conflict with your view, which I think is undoubtedly correct. I fear, however, that it is no longer a practical question. Mr. Worth, in his card declares that to bring up the matter again would be a fraud upon the government. I cannot understand this, and I do not assent to it. But I am well satisfied, whether we may be nominally restored to the Union or not, that we will be ruled with a rod of iron, and will not be allowed to take any action objectionable to the powers that be. Mr. Devereux prefers to contest the point by tendering coupons of the war debt bonds in payment of taxes. It occurs to me, that the better plan would be to present a coupon to the Treasurer for payment, and on his refusal to sue out a Mandamus. But as the Supreme Court of the United States, now lost to all sense of public virtue, and all regard for law, would be that of final resort, I greatly fear the whole proceeding would be only a mockery.

¹Edward Conigland, of Halifax, a brilliant lawyer and native of Ireland, who was a member of the convention of 1865-1866.

My heart sinks over the picture in the conclusion of my speech, to which you have referred. Its realization is so far off in the future, that it pains me to contemplate it. During the whole time of the discussion I had an undefined feeling that I was wrong in this particular, but I was hurried away by the ardour of preparation and debate. I should, rather, have painted the State in her desolation and have called on her Sons to save her honor from the wreck.

I did not, at first, like the suggestion that the negroes should be colonized. I thought, on principles of political economy, that to deprive the State of so many able bodied labourers would be the depletion of her wealth. But subsequent reflection satisfies me, that so long as they remain they will continue to be, as they now are, to use your words, a "noxious nuisance," and will moreover, be the pretext for constant intermeddling in our affairs, by the Yankees. I wish we could get rid of them, and I wish we could supply their place with white labour. Immigration would, doubtless, be a blessing to us, provided we could always control it, and make it entirely subservient to our wants. Although not "native and to the manor born" I yet have a great dread of any species of immigration, European or Yankee. I vastly prefer the former, which might outnumber us, or seriously affect the salient points in our character. But I am of the opinion, that the Southern people are tenacious of life, that they will preserve their characteristics, and impress them upon the immigrant, even when outnumbered. The immigrant would come only as a labourer, he could not be amalgamated to any extent before the second generation, by which time his rough points would be worn off and his character assimilated to our own. The subject is not free from difficulties, but on the whole, it seems to me that immigration may be prudently encouraged.

It was mortifying to notice the spirit evinced by many in the Convention—so prescriptive and so subservient, two characteristics which are always found united. Some seemed to think that their chief duty consisted in re-echoing Yankee denunciation, forgetting that in aiding to destroy Southern character, they were but placing a yoke upon the neck, and a stigma upon the brow of our own people. He who knows much of English action, in its worst days, toward Ireland, can find its parallel to some extent in the present state of affairs. It was made penal to teach or speak the Celtic language, and what the sword had left undone the halter and the press were called in to finish. When the Irish were compelled to be silent, every slander that English hatred could suggest was circulated upon them, nor has their national character recovered, nor will it ever recover therefrom. So with us. We have passed through a four year's war, and by the events of that period must the Southern character be judged, and proudly may it ask to be judged thereby, properly and truly represented. But our enemies are using every literary vehicle to defame us, to poison the mind of the world against us, that thereby they may excuse their own atrocities, and make

I do
not

us fit subjects for slaves. Those mock proceedings, the trial of the Conspirators, the Wirtz trial etc. which rival in infamy the worst days of Irish special commissions, have all the same object in view, the destruction of our good name and fame. And yet men, born on our soil, are so recreant as to muzzle their speech, or if they speak it is actually to sustain, with unblushing face, this state of things. "Oh, for a tongue to curse" such slaves. One gentleman went so far in the Convention as to "Bless God that the sun of liberty was then shining upon him", but this was a minor offence compared to other occurrences there. I know you will not misunderstand me. I am not unmindful of the maxim "A close mouth makes a wise head." I am no advocate of fool hardy utterances, but I believe it to be our duty, upon all proper occasions, and in a discreet manner, to vindicate our sectional, I might say, in one sense, national, character, against the assaults of our enemies. I am not without hope that the opportunity to do so to some extent, will fall to my lot before the final adjournment of the Convention.

The legislature is fast perfecting the nefarious scheme, originated in the Convention of expelling the judges. We must submit to it. An angel from Heaven could not turn them from their purpose.

I cannot trespass longer on your attention, otherwise I would refer to some other points suggested by you, but I hope to do so at some other time, and I trust that I may be again honored and aided by your views. The length of this letter would be unpardonable, had you not so kindly invited my correspondence, and presuming thereon I will occasionally detail whatever I think may prove interesting to you. Fervently praying that you may be long spared to enlighten us by your wisdom and experience

I am, with profound regards and respect

Very truly yours

EDWARD CONIGLAND.

From Weldon N. Edwards

POPLAR MOUNT 5th Decr. 1865.

The well known superscription announced a letter from my old and very dear Friend Ruffin. Never was one welcomed with more joy—it was the messenger of glad tidings—telling me that he was still living—tho' he be beset by a wilderness of troubles and surrounded by *political* and *moral* disorders, almost without a parallel—old age must be unusually gifted not to sink under them. We may, my good friend—well console ourselves, that we are able to bear the heavy load of Ills—physical and mental—with which we are visited. They are enough to pull down all the Philosophy earned in the trials of the longest life. My elasticity of spirits, which has been my chief sustenance thus far, sometimes sinks under them—but, thank God! reaction

succeeds and lifts me up again. The political and moral distempers of the times preexisted our late fatal struggle and were doubtless the cause of our overthrow. We had strayed far and made void God's law—it was time for him to work—and it was his own good pleasure to choose the worst of Instruments to afflict, that he might chasten us and bring us back from the wicked paths in which we were recklessly wandering. "Man is born to bear." But enough of this—it is a task beyond my ability—*non sum qualis eram*. Writing is irksome to me—*thinking* more so. I am not like those who *can*, but *will* not. I *will*, but *cannot*. I will give you my thoughts in scraps when we meet. It would take sheets to tell you all my troubles, vexations and losses—and I wish I could say with Falstaff "a plague on all sighing."

God willing and health permitting, I will be in Raleigh next Monday the 11th Inst. and will meet you and our Friend Swain the next day at the Treasurer's office early in the morning. Do. my Friend prepare the Report in advance, so that we may not be detained, there is nothing like Home. The best part of my reason for going is to meet *you* once more. Think of you I ever shall and with perdurable and undiminished affection. For my reticence till now, I adopt all the language in which you so happily and satisfactorily describe the cause of your long silence.

* * * * *

To Hon Thos Ruffin Esqr.
Graham, N. C.

From R. M. Abbott.

December 7th 1865.

Mr. Ruffin I have been thinking about changing my contract a little with my negroes if the chaing will meat your approbation I think it will be the best for us.

the change I wish to make is to give them one third of the pork kild next fall and not give them any part in the oat crop nor fodder, my reason for desiring the change is because I am compeld to raise peas and corn and oats to turn my hogs on in the summer and fall which I could not do without doing injustis to the hands and if they pay for one third of the corn I feed to the hogs I think it would be about fare to let them have a third of the pork and no oats nor fodder, then I can put the hogs on oats and peas when I pleas without any injustis to them because they will get there part and I think it will have a tendency to prevent stealing you can write to me on the subject.

I am getting on very well with my work I want to get dun ploughing before Christmas.

I can take that mare and foal if we can get them up here my white men are working very well.

Your friend

R. M. ABBOTT

From Charles Manly.

THE BOARD OF TRUSTEES OF THE UNIVERSITY

Decr. 11—1865.

On Motion of Gov. Swain

Resolved

That a Committee of Three be appointed by the Chair with instructions to inquire into the condition of the University; what are its liabilities and means to meet them and what plan can be devised to perpetuate its existence.

The Chair appointed Hon. Th. Ruffin and Mr. Bryan and Mr. Manly to compose this Committee.

From Jesse Ruffin.

POPLAR HILL

Dec. 15th, 1865.

My Dear Master.

I have written to ask you if you will please have every thing ready for killing hogs Monday morning. I will be up Saturday night, and will be obliged to return on Wednesday evening. I hope that you will have every thing ready so that I can get along as fast as possible.

Yours most truly

JESSE RUFFIN.

From Jonathan Worth.

RALEIGH, Jan. 18/66.

I have barely time to thank you most heartily for your letter of the 16th—and to express my regret that you had not sent it a little sooner. I finished my message last night. Your letter reached me today too late to enable me in drawing up my message to avail myself of some of your valuable suggestions.

I have recommended the repeal of the stay law which I have always regarded as unconstitutional and unwise pernicious alike to debtor and creditor and demoralizing in its tendency. I presume the recommendation will be disregarded and probably disapproved by the press.

I will try to further your views in relation to the Sinking Fund.

From Weldon N. Edwards.

POPLAR MOUNT, 24th, Jany. 1866.

You will not blame me, I am sure, for not answering sooner your kind, more than kind, and highly valued letter of the 10th Inst., when I tell you I have waited till you could locate at Hillsboro, to which place this is directed.

The Paper writing sent me is the very "thing"—My wishes, my feelings and my promptings are all set forth with a precision and clearness that make it indeed my last Will, and it is a very high satisfaction to reflect that the last office rendered me on Earth (a Will is ambulatory) was by my affectionate friend, Thomas Ruffin—A friend in Truth and in deed—made so by ties formed in early Boyhood—which age has not weakened but greatly strengthened, and which, with me, (as I rejoice to think they will with you) remain unimpaired till I go the way of all the Earth. That such Healthfulness of Mind and such powers of combination of elucidation should be retained in your extreme old age is a blessing that falls to the lot of but few. As for myself, my mind will not work, it seems to be in a state of mutiny—it can't be indolence—it is no doubt owing to rust and decay, but in some degree to want of early discipline, which you know my poverty deprived me of, and like all undisciplined bodies, slight causes unfit it for efficient action. Old time seems to [have] levied upon all my effects, and like the prodigal, whose resources are exhausted, I shrink from every thing that betrays my paucity of means. I am not complaining, my Friend!

I patiently and composedly bide my time. My Health is excellent and my spirits yet remain to me as a Crutch. With care and proper Husbandry I have no fear for comfort in this life, and a suitable and ample provision for Mrs. E. after I am gone. I rejoice to hear you have sold yr. lands in Alamance. I hope very advantageously—should have been more pleased had you told me the price. I have five Tenants, two large and three small ones. My income from these sources will place me far above want.

If the dominant Party in Congress shall override the beneficent Policy of the President, then will the utter inefficiency of Paper Guarantees be fully demonstrated, and the Friends of Popular Government will decry "the Beginning of the End." Such Guarantees are worth nothing without public virtue, and I have long believed that this indispensable Pillar of Rep. Govt. was toppling to its foundation. Our condition as a State is strangely anomalous. We are *in*, and we are *out* of the Union. All the Departments of the Federal Govt. have recognized us a *state*, and yet the Doors of Congress are slammed in the face of our Members of Congress. What then becomes of the great American Principle, that Representation and taxation are unseparable?

But it does not become me an unpardoned "Rebel" to speak of these things. I obey the Powers that be.

I wish I could be with you, and, if I am spared till good weather in the Spring, and can raise transportation funds *now* think I will visit Hillsboro to see your family and my excellent kinswoman Mrs. Jones.

* * * * *

To Hon. Thos. Ruffin, Senr.,
Hillsboro, N. C.

From Elias Dodson.

MOCKSVILLE, N. C. Feb. 16 1866.

Dear Sir: I write you a letter as I cannot see you to talk with you. In looking back on the terrible storm from 1861 to 1865 we naturally consider the causes. When the devil becomes very religious, he aims to remove some curse that God has imposed. The crusaders fought nearly 200 years for the Holy Land. God had placed upon it his curse. God pronounced the curse of slavery upon the fairest and best portions of mankind in the garden of Eden, when he said to Eve that her desire should be to her husband and he should rule over. Christ and his apostles found this curse but did not aim to *remove* it but to *mitigate* it. They carried out the same plan about slavery. If the Yankees had preached and written as Christ and his apostles, this civil war had never been. Both English and Yankee writers are responsible for this trouble. Payley's moral Philosophy has been in our Southern colleges for *years*. When the students came to the chapter on slavery they should have taken up the N. Testament at 1 Tim. 6: and other places. They ignored revelation. We did the same by circulating their books. Thomas Scott, the commentator, was an abolitionist. John Wesley was one, George Whitfield was not. Not *one* drop of blood in this revolution is chargeable to the preaching or writing of George Whitfield, of Burkett, or of Gill. An abolitionist preacher does more harm than good. His influence sends *ten* men to hell, when it sends *one* to heaven. Paul draws an *exact* picture in 1. Tim. 6: Infidelity and abolitionism are twin sisters. Horace Greeley is an Universalist. I hear that Henry Ward Beecher has come out a hell redemptionist. Unitarianism has swept Massachusetts and Cambridge University. Dr. Dwight prevented it from sweeping Connecticut and Yale College. It will not answer to say that the negroes are free and that abolition books can do no harm. Infidelity always does harm. As ignorance has injured us so much during the war we ought to lay out much money for schools. Ohio taxed every dollar 1 mill for education and 1/10 of a mill for libraries. The State is educated. Ban-

croft says Massachusetts gave 1 peck of corn or 12½ cts for each settler to Cambridge University. Besides this sum, John Harvard, the Lawrences and others made donations. The Lawrences gave most of the \$100,000, for the observatory and for the Professorship of the Application of the Sciences to the Arts. They have one of the greatest botanical gardens in the nation under the care of Professor Gray. Miss Mariah Dudley gave \$100,000 to the Dudley Observatory in Albany, N. Y. The raiders destroyed sufficient property in N. C. to make all these additions to Chapel Hill and to support free schools in the State for 40 years. I hope Chapel Hill will have all these things in a short time. The State was penny wise and pound foolish in not having these things before 1860. In this year I was in East Tennessee and found the people *very* ignorant. It is now unsafe for an orderly man to live there. "A storm is heavy and the sand weighty, but a fool's wrath is heavier than them both." A *fool's wrath*. How many of such people are in East Tennessee? What is the cause? Ignorance. *Ignorance* made the tories of S. C. in 1780. See Marion by Weems Chap. 31. If education had been diffused in the South as it was in Prussia, how different would be our condition. Our politicians ought to aim, as *the first thing*, to educate *all* the people. All our academies should have globes terrestrial and celestial, as well as other instruments on the small scale. Our University ought to be equal to any in the North.

In 1858 Norfolk thought of having a line of steamers from that place to Nantes in France. This town is near the Bay of Biscay. We ought now to have one from Wilmington to that place, another to Liverpool and a 3d to the West Indies. De Witt Clinton turned N. Y. into a garden. If a line is established to these places, Wilmington will have a population of 100,000 in 20 years and the best workmen in England will be at all our factories in the State. We can then send cotton and tobacco for goods and keep our money here. Labour will be so low that we can work as cheap as the Yankees. Gov. Vance could set this ball in motion.

I am very much pleased to see our people patronize the books of Sterling and Albright in Greensborough.

[ENCLOSURE.]

Jethro recommended Moses to choose men to assist to judge over 10's 100's and 1000's. They were to *fear* God, love *truth* and hate *covetousness*. (Italicks mine). If we had had such rulers for the last 25 years, this war had never been.

We ought to educate our wounded soldiers and the orphans of our soldiers. They will not then be dead capital in our country. I heard

that Dr. Lacy father of Dr. Lacy of Raleigh had his hand shot off when he was a boy. He was educated and in 1799 was President of Hampden Sydney college. He had a silver knob fixed on his wrist and could carve a turkey as well as any man by screwing a fork on the knob.

The sins of the nation may have brought these troubles. Jehovah charges 3 sins against Sodom—pride, fulness of bread and an abundance of idleness, Ezekiel 16: 49:

The Jews were frequently conquered by nations more wicked than themselves. But the conquests did not signify that idolatry was right. For both the Jews and idolators were afterwards destroyed. This whole nation may be under the curse of Heaven. Jer. 18: 7-10. The ways of Providence are very mysterious. All Europe united against Napoleon and in 1815 placed the Bourbon family on the throne. Till 1846 there was a statute law in France, that none of the Bonaparte family should ever have any office civil or military. Yet in 1848 Louis Napoleon was on the throne of France.

From Walter Gwynn.

RALEIGH, NORTH CAROLINA

March 12th, 1866.

Your note by Mr. Berry was duly received. I have often thought of replying to it, and having no other excuse to offer (if excuse it be), I must charge the delay to "General Procrastination," who I blame very much for many disasters that befell our arms in our recent war for self-government.

I was glad to hear that you effected your change of base without loss or damage. I have no doubt it was a good move, and hope you have already found it so.

I have been closely housed all this winter, on account of a bad cold, which I have at last mastered, and will soon follow the sun in its northward march. For "promotion cometh neither from the east nor from the west, nor yet from the south." This passage often occurred to me during the war. It is pretty well verified in ancient history and I think in modern times; no permanent conquests have been made by southern nations in northern regions. Napoleon was forced to give up all his acquisitions, and France herself was overrun by Russia and Prussia. Italy has removed and thrown off its Austrian yoke—and this may encourage us to hope that smothering sympathies of Europe may yet, and perhaps at no distant day, break out and stretch forth the strong arm in aid of our enfranchisement. The President's veto has utterly failed to break the northern phalanx, and yet many seem to

think the future less dark and threatening—perhaps so, though oppressed as we are with debt, I see but little hope for the south even when restored to political rights. Uneasy as the present is I would rather dwell upon it than look into the future.

I have fixed no time for leaving—I intended to make no charge for the sack of oats, it costs two dollars and fifty cents (\$2.50) nothing was paid for freight.

Hon. Thos. Ruffin

Hillsboro, N. C.

From Jonathan Worth.

RALPH, April 26, 1866.

It appears from the report of the proceedings of the Literary Board that the controversy between them and the Albemarle Swamp Co. in reference to the title to certain lands drained by the board in Hyde Co. was referred by the parties to you for arbitration. As no decision appears on the records, will you have the kindness to state for the information of the Board what is your recollection of the condition in which that question of title remains.

Hon. Thos. Ruffin Sr.

From Daniel M. Barringer.

BALTO. May 15th. 1866.

I write this note at the request of *Mrs. A. D. Egerton*, of this City, Secy of the Committee for N. C. of the "Ladies Southern Relief Association" to ask your co-operation with Judge Manly and Mrs. Graham in the distribution of a small sum sent to the former a few days since for charitable purposes among the destitute of Hillsboro and vicinity. Your name was mentioned by me in Committee, whose meetings I have attended at their request. But Mrs. Egerton fears that she has inadvertently omitted it in her note to Judge Manly.

How do things look in our good old State? I fear the prospect is gloomy for years to come—but still I hope for the best.

My general health is much improved—but I am still quite lame. My other afflictions, however, have been so much greater that this appears light in comparison. Mrs. B. begs to be remembered to you.

Her health is much better. My stay here is uncertain—depending somewhat on the movements of Genl. Ruger, who still occupies my home in Raleigh.

* * * * *

[P. S.]—If you find time I should be glad to receive a line from you on the State of affairs in N. C.

From William H. Bagley. ¹

OFFICE OF THE LITERARY BOARD

RALEIGH, N. C., May 16th 1866.

The Literary Board, at its session on the 27th ultimo, passed the following order:—

“Ordered, that the Secretary address Judge Ruffin to ascertain the present *status* of the suit pending in the Superior Court of Washington County, at the instance of the “Albemarle Swamp Land Company” against John W. Keeling, involving, incidentally, the title of the Board to a very large body of land around Pungo Lake.”

In carrying out the instructions of the Board, I beg leave to call your attention to the following extract, in regard to this suit, from Gov. Bragg’s message of December 18th 1856:—

“A suit has been pending in the Superior Court of Washington County for several years, at the instance of the Albemarle Swamp Land Company against John W. Keeling, involving, incidentally, the title of the Board to a very large body of land around the lake (Pungo). In 1849, Mr. Keeling purchased of the Board a piece of this land, and gave four notes to the Board for the purchase money, each for the sum of \$755. One of these notes was paid subsequently; payment of the others has been suspended to await the determination of the suit, the board having warranted the title of the land. Mr. Keeling entered upon the land, and proceeded to get up the timber, when an action of trespass was brought against him by the said company, claiming under grants issued by the State, of an old date. From such information as the Board has upon the subject, they learn that these grants, if they can be successfully located, (about which, however, there is great difficulty) as the Albemarle Swamp Land Company insist, a large portion of the land now and heretofore claimed by the Board will be covered by them. Our predecessors in the Board, therefore, employed counsel to aid in defence of said Suit. Owing to difficulties and delays of procuring a

¹William H. Bagley, a native of Perquimans County, the son-in-law of Governor Worth, and at this time his private secretary. He was later chosen clerk of the Supreme Court and held that position until his death.

trial, the whole matter was referred to the Hon. Thomas Ruffin, late Chief Justice of the State. It has been argued before him by counsel, but as yet he has not announced his decision. It is proper to state that it was agreed in the reference that either party might appeal from the decision of the referee, and it is probable, therefore, that the case will go to the Supreme Court."

I will thank you to furnish the information desired in time to be laid before the Board at its next meeting, on the 25th instant.

Very Respectfully,

Yr. obt. servant,

WM. H. BAGLEY
Sec. to the Board

[Address: Graham, N. C.]

From John M. Morehead.

GREENSBORO 18th May 1866.

Judge Ruffin

Dr. Sir Yours of yesterday was recd this morning.

The time you propose 7th June is about the time of Commencement at Chapel Hill, which I expect to attend.

As it is very important to close the matter while there is a directory, that will act—I greatly prefer it shall be done as early as possible. I therefore propose to go down on the train leaving here at 1 ocl^k P. M. next tuesday. I do not wish to put you to so much trouble as to return to Newbern, but if you think it best, join me at Hillsboro, and let us go down and make a close of the matter. There is really no necessity for yr revisit of Newbern—as I have no further evidence to offer—nor do I think Mr. Thomas will have. I have the Cutlar contract and Col Thompson's report on the same—and shall abide by his report after correcting the errors appare[n]t on its face. I have also from their treasurer a statement of all credits claimed—so on that account there will be no absolute necessity of yr going down about that.

And as to my claim for extra allowance for wild-cat ravine, The Book you have contains all the monthly estimates they allowed me while doing that work—and B. Arendells statement shows the number of hands and train they were employed in doing the work.

I shall avail myself of yr suggestion to make all the references binding now and henceforth, by entering into a written agreemt. with the President under the corporate law.

Next week is court here and the week after at Rockingham, both of which I wish to attend. I can leave home on Tuesday at 12 oclck next week and retn. in time to go to Rockingham, and the week after to Chapel Hill.

I have given you my programme but am ready to conform to any you may suggest—but I would like to have the award made as long as possible before the meeting of stock-holders last thusdy. in June, as it will be necessary to get the present Directors together to close the matter with me,—and that may be attended with some delay and put it beyond the time of the present Directory—and if the Newbern clique get charge of the Road again, they will see the Road annihilated before they will ever pay me one cent.

Yours truly

J. M. MOREHEAD.

Let me here from you.

From William A. Graham to Jonathan Worth.

HILLSBORO' May 18th 1866.

In reply to yours of the 15th inst. touching a claim of the North American Land Co. to the swamp land of the Literary Board. I can state that in May 1847, I proceeded with the other members of the Board, Messrs J. M. Morehead and Weston R. Gales, to Leachville, the residence of Major John Clark Esqr. and thence to the head of the canal in Pungo Lake; and there made a sale at auction in pursuance of advertisement of a section of Juniper lands fronting on the Lake, heavily timbered, and of great fertility to a Mr. Keeling of Virginia. The aforesaid Company represented by Messrs. Riddick and others, also Virginians, who had been getting shingles in that country, under lease from Josiah Collins Esqr. attended and forbid our sale, but we proceeded to sell, the Literary Board warranting the title. Keeling took possession and commenced getting shingles and clearing, but afterwards became insolvent: and his surety for the purchase of said section of land, afterwards I think, took the title.

This latter event took place after the expiration of my term of office. The Board afterwards brought a suit to assert its title against this Co. Mr. Collins being the real defendant. After a mistrial of the case at Washington Beaufort County, it was referred by Consent of parties to Judge Ruffin. In 1856 or 7, he heard the evidence at Plymouth, adjourned the case to Raleigh during the summer term of the Supreme Court, where it was argued before him in the Senate Chamber, by Wm. N. H. Smith, Rodman and others, and has never been decided. The Board should press a decision. I do not know the purpose of the

arbitrator, whether or not, he expects still to act. But this should be ascertained, and the interest of the board established, if possible, in the court, if not otherwise.

The Journals of the Board will show my transactions in regard to this great interest of the State. I do not know except by general information, what was done in respect to it under subsequent administrations. I am quite certain of the facts above stated.

His Excellcy

Jona. Worth

Prest. Lit. Bd.

I think B. F. Moore Esqr was counsel in the cause aforesaid for the Lit. Board, and I suppose can explain the claim of either party.

From Charles Manly.

RALEIGH May 21, '66.

My dear Ch. Justice

I am truly obliged to you for your letter just recd. Besides the reassurance it gives me of your kind and long continued regard and friendship for me and mine it contains some very encouraging and ghostly advice.

Badger and I came into the world about the same time, He, a few days ahead and I have been keeping a steady eye upon his passage and the phases of his horoscope as indicating the close of my own race. I am broken down, my dear Fellow, in mind body and estate and there is no recuperation in the business. I have been trying to get K. . . . M. . . . to blow out my brains with a pair of pistols that hang at the head of my bed, but the hard hearted crittur wont do it. I have no money. No one will buy real estate. My life insurance, which I have kept up for 20 years is about to expire for want of renewal—3 Tax Collectors, Federal, State and City are howling around my house like prairie wolves—The old "Ooman" tells me the Flour and Bacon are *out* and no lard *in*. Truly "My sufferings is intolerable".—Dont you think K. . . . ought to shoot.

Your advice about eating is good; and has set me thinking. Old Lewis Shearon, Mr. Macon's overseer, being greatly surprised at the high price Mr. Macon had to pay for board (about \$3 a week) inquired if he didn't have baked shoat every day for dinner (that being his ne plus ultra) and Judge Henderson always insisted that fried ham and eggs was the *nectar* of the Heathen Gods. By the by *nectar* was supposed to be something to *drink*. But the old chief, though a good lawyer, was no dabster in mythology and the classics, but was *some* on ham and eggs.

Now if I could find some quiet farm house in the country away up on Stinking quarter in Alamance or Lick Creek in Chatham where the good dame wearing a clean apron and a broad brim wool hat ("thems the wimmin for housekeepers") would give me fried ham and eggs with some milk and a hoe cake of corn bread for breakfast and baked shoat for dinner I should like to take lodgings there and stay till the coupons on my Confederate bonds would be received in payment. I should follow your advice and eat *slow*. Besides if I were in old Chatham I think I could get some of the descendants of Caje Foushee and Castle Rottenbury to get up a cock fight for my benefit for I have not seen one in a long time. I'm quite sure that Dennis Tyser and Fielding Coward would make up a quarter race. Unless I can be blessed with some such *alteratives* as these and get clear of the sight and hearing of these Bureau thieves and Robbers I can have no inducement to tarry here any longer.

These Doctors tell me quite complacently (what I ought to have known) that there is no remedy for old age and that nobody ever heard of Asthma being cured. Very well.—I have sent to Pescud to find me a bottle of Hoofland's German Bitters. That, it is said, will cure all ailments past, present and to come. Equal to the plaster that cured Aunt Jemima's dog.

I should like to go to Commencement once more. These Railroad Folks have reduced the fare and if I can get some one to *hand round the hat* or get up a feast or Tableaux for my expenses I should like to try it.

Buncombe has been slashing the Boys about their silly selection of Ball Managers¹—thoughtless, childish affair. But the selection and invitation of Prest. Davis is a downright insult. To ask a man *in jail* to be a Ball Manager!! Holden has resigned as a Trustee of the University.

I am considerably exercised with poetry and the classics. When these Lordly Bureaus come riding round on fat horses stolen from Southern Gentlemen, with their clashing swords and epaulettes and their bellies filled with Lamb and peas which their beloved associates have stolen for them, I exclaim with Cowper.

Oh, for a lodge in some vast wilderness
Some boundless contiguity of shade
Where rumour of oppression and deceit
Of unsuccessful and successful wars
Might never reach me more.

¹In the spring of 1866 the student ball managers at the University selected President Davis, General Lee, Governor Vance, General John C. Breckinridge, General Robert D. Johnson, and General William R. Cox as honorary ball managers. A storm of feeling, out of all proportion to the cause, was aroused among the radical element in the State.

Then again I break out with Chaucer, or some of those old Chaps, sentimentally, †

I wish I had a load of poles
To fence my garding round
To keep these Hogs "ad Drat" their souls
From rooting up my ground.

You see, there is a place contiguous to the back of my garden which, on account of its inhabitants has been called and known as Hayti. But these Yankee Hog thieves have come in and mixed up with their odorous brethren black and yellow, male and female, holding orgies of Bacchus and all deviltry till the place is dignified with the sub-riquet of "Hell's half acre." These she villains hang their clothes and rags on my fence, tear off the palings and let in the Hogs. Aint this a case for cussing both in poetry and prose? I wish I had Andy Johnson here to pour it out upon them. I understand he can excel Dr. Slop's oath in Tristram Shandy about the knots in that cloak bag.

But I'll stop. I'm really ashamed of this letter and have a great mind to tear it up. You have kindly inquired after my health etc. and I have replied in such way that I fear you'll think I'm crazy.

But I aint.

Where is my friend Mr. Cameron and what is he about? Give him my affectionate remembrance for his Father's sake and his own.

Believe me, my dear Sir,

With the highest regard,

Your Friend truly

CHAS. MANLY.

From John W. Cunningham. ¹

WOODSDALE, PERSON Co. N. C.

June 3d 1866.

Our friends here, are anxious for you to give us your opinion, on the legality of the probable attempt by the next legislature to repudiate individual debts. Is it not in violation of the constitution of the United States? If so please designate the particular sections it would violate. Is the clause in the 10th section, 1st Art. forbidding the State from passing any law impairing the obligation of contracts, the only grounds taken from that instrument on which jurists have uniformly decided against laws of this character? Do you consider the 2d sect. of the 6th Art. as prohibitory of the same species of legislation? You, my dear

¹A prominent citizen of Person County.

Sir, would confer a favor on many of us, by giving us your views at length on these constitutional questions, as well as upon the policy which the Legislature ought to pursue for the relief of the people in these times of so much pecuniary distress.

From William A. Graham.

HILLSBORO, June 4th '66

At the instance of the gentlemen of the bar in Wake I have undertaken to prepare a discourse on the life of our late friend Mr. Badger. Mr. Devereux has undertaken to furnish me with some particulars of his earlier life: and I shall be greatly obliged, if at your leisure, within a week, you will sketch any reminiscences that occur to you of your long and familiar acquaintance with him, illustrative of his mind and character.

Hon. Thos. Ruffin.

*To E. J. Hale.*¹

HILLSBOROUGH, June 5th, 1866.

My dear Sir.

As Mr. Cameron and I have often conferred on the subject of his late letter to you, he very naturally showed me your reply: to which, I hope, you will find no reason to object, as, I trust, you are satisfied, that my feelings towards you are those you would wish to be entertained by your best friends. The perusal of it inspires the desire to express to you sincere parting salutations—being well satisfied they will not be unacceptable. It is true, I deeply regret, that, after the thorough consideration you and your sons have given to the subject, you have reached the final and settled conclusion to emigrate from North Carolina; for I know, that after all the services you have done her and with all the love you bear her and all the love so many of her best men bear to you and yours, your departure has been concluded on under a sense of the hopelessness of her condition or of the absolute obligation on each of you to seek in another clime and a new field the means of that competency, which is indispensable to independence of feeling and action, and almost to integrity of life. I had hoped and, indeed, believed, that the resumption of your honourable and honoured ancient occupation as speedily as the mails and the state of the country should allow was

¹From the E. J. Hale Papers, collections of the North Carolina Historical Commission.

certain and would redound not less to your personal advantages than to the benefits of our beloved State; and that, especially, great prosperity would not fail to attend the Transfer of your Press and residence to Raleigh. I earnestly desired such a transfer, as likely to enlarge the sphere of your usefulness. But it was one of the chief wishes of my heart, that *The Observer* should live again somewhere! The purpose of this note, however, is not to press or even renew that point. You know best, and I give up to your better views. My object now is to offer my thanks for the good you have done; to contribute my small share towards honouring the ability and patriotism displayed by yourselves and inspired in others by your long and honest efforts to maintain among us good measures and good men; and, above all, to tender to you, be you where you may and in whatever calling, my sympathy for your losses in the common cause, and my good will and wish your future success to your heart's desire. May Fortune favour you! May God protect and guide you; and may His Peace abide with you! So prays your friend, Dear Sir,

THOMAS RUFFIN.

E. J. Hale Esq.
Fayetteville.

From Edward J. Hale.

FAYETTEVILLE, June 8, 1866.

I gratefully appreciate your letter of the 5th inst. It cheers and inspires me, as a former valued letter of yours did in the crisis of 1863. I have preserved that, as I shall preserve this, among the treasures to be left to my children, believing that they can have no better inheritance than such evidences of the estimation in which their father was held by one of the wisest and best of those patriots who stood by their State and Country through all trials, and who would not have regarded their own individual losses if only the Cause had not also been lost. I bow my head in grateful recognition of the fullness and earnestness of the blessing which you invoke upon my future, feeling that a portion of that good, the Peace of God—rests upon me in the very act of reading your solemn invocation of it.

* * * * *

From Edward Conigland.

HALIFAX N. C. June 26th, 1866.

I took the liberty of sending to you some copies of a speech made by me during the recent session of the Convention, on the proposition to

change the basis of representation. I did not send the speech for any intrinsic value I thought it had, for it was, except the statistics, almost an extempore effort, and intended for immediate effect, while that of Col. Bynum was well and carefully prepared, and read from the manuscript. But I felt satisfied that you would be pleased to learn, that the popular doctrine, namely the indefeasible right of a mere numerical majority to have all power vested in their hands, does not as yet pass as entirely orthodox, and has not succeeded in compelling universal acquiescence. I am convinced, that no position as to locality which you might occupy in the State, ever could induce you to abandon whatever you might regard as the true principles of government.

You will notice that the Constitution was taken up by the Convention, Section by Section—almost word for word. By united and determined efforts, its great conservative features have been preserved for the present; but, I greatly fear, only for the present. A spirit of radicalism is at work which will not cease until the Judges are made elective for short terms, and until all property qualification for office is destroyed. Magistrates are made elective for the term of six years, and the proposition to make the Judges so, for a term of eight years, received thirty votes in a thin house. Mr. Moore combated every attempt at radical encroachment with the utmost ability and watchfulness. But I greatly fear that his own successful efforts to remove the old Judges has so demoralized public sentiment, that our legislation will long feel the effects of the measure. He is my best friend. I admire his energy, learning, ability and singleness of purpose, but I can never cease to regret that his views of public duty led him to favor a measure which I must always regard not only as unjust in itself, but as highly injurious, in its effects, upon the public mind. This argument, shallow it is true, seemed to be resorted to. "If the Convention thought proper to remove the Judges, and make room for others, there is no reason why the people should not have the matter in their own hands." And so election of the Judges, for short terms, will be the end of it.

I am much depressed by the aspect of public affairs. It seems to me as if the sword of Damocles were suspended over our heads. The turning of a feather almost may subject us to a despotism such as, in our most hopeless moments, we never anticipated.

To Edward Conigland. ¹

HILLSBORO, July 2nd, 1866.

My Dear Sir./

Finding that, in the altered condition of the Country, I could not, with any profit of satisfaction, carry on a Plantation, I sold my

¹This letter is in the possession of Mrs. Fanny Conigland Farinholt.

lands in Alamance in the beginning of the year and in February transferred my residence to this place; so that I did not receive your kind letter, directed to me at Graham, until yesterday: when a friend forwarded it. And I have not yet received the copies of your speech, mentioned in the letter. But I presume, I am acquainted [with] its tenor, as another friend, much impressed with the argument and thinking that I should also be, sent me "The Sentinel", which contained it. I need hardly assure you, that my opinion concurs with yours on "the basis of Representation," and that, without any reference to the "Statistics" as operating upon the preponderance of members in the representation of the different sections of the State. I was well enough satisfied with the previous provisions of our Constitution on this subject in their practical effect, and would have been content to abide by them still. But I must own, that, as things have changed in regard to the negroes, those provisions would not now rest on a principle, sound in theory. Yet I think them more sound than the one you adopted in Raleigh. Under our Republican system It seems right that one Branch of the Legislature ought to represent persons. When that is said, the question arises, "What persons?" I say; *all*; because all are equally affected by the laws that may be enacted. I do not mean, that all are to vote for representatives; for my opinion is quite to the contrary. All freedmen ought to have equal civil rights: that is, security in person and property by the Constitution and the laws made under it. Those are natural rights inherent in freedom, and such security is not only due to all persons, as their right but is essential to the peace and welfare of the body politic. But, as to political rights or powers (which are the same things) the considerations are totally different. They consist, not in the rights above mentioned as held *under* the law, but of the powers *over* the Constitution and laws—to make or alter them—which principally consist of the rights of being delegated to make the laws or choose the delegates. That power or right is not a natural one, but conventional and according to the sense of the Community of the fitness of particular classes for the exercise thereof, regard being had to the homogeneity of the classes, the safety of the existing government and the security in person and property of the most numerous, intelligent, virtuous, and valuable portion of the population. Those reasons have always excluded women and minors, of the most favoured race, from the exercise of political powers in all countries and do still exclude them: it being deemed impolitic and unsafe to confide such powers to those persons. The same reason necessarily exclude negroes now and ought to do so for all time to come, if not forever. But the enquiry still presents itself, whether, though not voting, they are not properly to be included in the estimate of population, when population is assumed as the *proper basis* of representation? It seems to me, that they ought. I agree, that "the federal basis," as it was called, the enumeration of a certain proportion of them as fixing the representation, is gone. That

Civ. rights for
freemen

provision was founded on peculiar circumstances and reasons, which have ceased to be applicable either to the Federal or State representation. But what other provision ought to take its place? There are but two that can be reasonably thought of, if numbers are to regulate representation to any extent; and they are, first, the number of voters, or, secondly, the numbers of people. Your Convention, so-called, has adopted neither, but, instead of it, says, the number of a certain class of the people, namely the white, in each county shall regulate the number of representatives of the county:—Thus making white women married or unmarried, and infants a part of the basis of representation. I do not complain, that, those portions of our white people are thus included. But I ask, why they are included and why they ought to be included? The answer is plain, that, though non-voters, they are as much bound by the laws that may be made and therefore, as much interested in them as the white men, who did vote for the delegates; and therefore the delegates ought to be men, who are their neighbors, know their wants and condition and sympathise with them both in their wants and wishes; and, hence, the number of those who represent such people ought to be in proportion to the people of the County, so as in fact to represent the whole people and guard the interest of all, whether voters or not. That is the principle, on which your Body rejected the voters as the criterion of the number of representatives, and took as the criterion the whole white population, including both voters and non-voters. My objection is, that black free persons were not also included—not as voters, but as fixing the representation in point of numbers. Every reason for including white women and infants applies with equal force to the blacks, and some of them with greater force. For example: the great burdens of governments in modern times are taxation and military service—in the latter of which women are not concerned and in the former married women but little and in poll taxes not at all whether married or single. Now, it most materially concerns our blacks, what poll taxes shall be levied, how they shall be apportioned to property taxes, and to what amount they shall be carried. Upon those questions, surely those, who live where the negroes are most numerous, who know their means, their willingness and their ability to pay this or that tax, are best qualified to judge, what revenue can be raised from them or what they cannot or will not willingly pay or cannot be expected without grievous distress and oppression. So with respect to military service, whether they may be safely trusted in it now or at a future day, whether they shall or shall not be trained to arms either by compulsion or by permission and whether it would be with or against their wishes: again, whether they shall be educated, as they may be able, and as their voluntary act, or at the public expense and from what sources the revenue needed for the purpose, shall or ought to be drawn; besides many other points: these are vital questions to the negroes and are of a nature, on which those living among them must be better informed,

and the representation from the County ought to embrace as many, in proportion to others, as will bring the largest share of the required knowledge, guard the rights of these people, keep open the way for their advancement, and make them contented and as happy as their subordinate and dependent condition will allow. It seems to me, therefore, that your Body adopted the very worst basis of representation, that could have been selected, both in respect of the White and black classes; and I think it of itself an entirely sufficient ground for the popular rejection of the Constitution—so-called—by all the Citizens of the State, and especially by those who reside in those portions of the State in which the Blacks are numerous.

But I ask the liberty of expressing further and more general reasons for the opinion I entertain, that the so-called Constitution is no Constitution at all, for that reason, ought to be rejected, without regard to its provisions, whether good or bad, approved or disapproved. I do not know your opinion on this point as I take no Newspapers and have not read much of your proceedings. But I assume, upon my knowledge of sound principles which actuate your conduct as a citizen and a politician, and your large and accurate attainments as a Lawyer and a Constitutional politician, that you have concurred or will concur with me, for the reasons, which appear to me most convincing. At any rate, I will venture to lay them before you. I might hesitate to do so, if I were addressing a narrow-minded, self-confident man, who never reconsiders, or to whom reflection brings no new light. But I remember, that I am speaking to a gentleman, who wishes to do right and is as capable of perceiving his own error as that of another and more desirous of correcting it. I will, therefore, proceed to state my views for your consideration—hoping, that they will meet your approbation, or, if not, that you will favour me with yours in opposition; that I too may have both sides before me and be, myself, brought back to the right path, from which I may have strayed.

I consider, that this is no Constitution, because your Convention was not a legitimate Convention, and had no power to make a Constitution for us or to alter that which we had and have; and that it cannot be made a Constitution even by popular sanction. If these positions be correct, it ought to be rejected by the people, as the easiest, simplest and most efficient method of setting the points at rest and avoiding many perplexing and dangerous questions before the Judiciary. I object to the organization of your Body as a Convention, because it was called without the consent of the People of No. Ca. by the President of the United States or under his orders: an act of clear and despotic usurpation, which could not give the Body any authority to bind this State or its inhabitants. If it be said, the President or his *Satrap*—his Governor of a Province—did not call or, rather, constitute the Convention, but the Delegates were elected by the people, and thereby the Body was duly constituted: I deny it, directly and positively. The Delegates were

not the choice of our people; for, in the proclamations, calling it, the qualifications of the persons, who might be eligible, and those of the persons who might vote for them were strictly prescribed in a manner varient from our fundamental law and excluding from each class a large portion—some would say, the best portion—of our qualified citizens. In many cases our People were not represented, but, in fact, were misrepresented. The acts of such a Body cannot be said to be those of the People of the State. They are not entitled to obedience and cannot be—or, at least, ought not to be—judicially recognized. The whole proceeding arose out of arbitrary assumption, over-throwing all just notions of popular and free government and destructive of the very first principles of Republican Freedom; and when it is put to the People for their sanction or rejection, then let every man, who was excluded from voting for a delegate, say, “No! I had no voice in making it or in choosing the men who did make it and I will not be now dragooned into its adoption”; and let every man, whose neighbor and friend was thus excluded, also say “No! the best men in the Country were not allowed a voice in constituting the Convention or electing its members and I will not sanction their ostracism by fixing on them a Constitution—an unalterable law—imposed on them by a body, in which they were not heard and from which they were expressly excluded by irresponsible military power or its subordinate and servile instruments: And let every citizen of North Carolina, say “No! too: I scorn and reject an instrument tendered to me under the name of a Constitution of North Carolina, which the People of North Carolina did not make and which was made for them by men in the guise of our representatives, who were not our representatives, but those of a power exercising at the time the authority of a Conqueror in military possession of our territory and arrogating to itself the right of superseding all our Civil officers and abrogating our laws.” Let the People cry, “We will have nothing to do with such a Convention or any Constitution proposed by it. If the Constitution needs amendment (and we do not enquire into that now) we will, at the proper time, a time of quiet and one, when the reason of every man will have its due play and office, choose good men at a free election and by the voice of all our People, who shall revise and amend that instrument: in other words, *we will make a Constitution for ourselves*, and not another for us!” But supposing that in the quasi revolutionary condition of the last year the military power of the Conqueror was either according to natural and rational law or by usurpation competent to the powers exercised on the subject and that our People, avoiding further resistance chose rather to submit to such usurpation and acquiesced in its behests, yet surely, surely the Body organized by the Conqueror under the name of a Convention, cannot in its acts validly transcend the authority conferred on it when it was called, and assume to perform the very highest of all delegated power, that of framing a Constitution of Government

in respect of all the powers which can be conferred and if all the restrictions which can be imposed by a People on all the different departments of Government. Yet such is the fact here. Mr. Johnson required a Constitution to perform certain specific acts: to annul the ordinance of Secession and tender a return to the Union or claim its continued existence under the Constitution of the United States: to emancipate the Slaves and ordain that slavery should never hereafter exist in this State: and to repudiate the State "War Debt." All these were done: the two first promptly and in satisfactory terms; and the third, at the last moment, under subjection and in conformity to orders, after having once refused to adopt the measure. All was done, I say, that was required and Mr. Johnson proclaimed, that he had got all he wanted and that we were back as a State and might choose our representatives in Congress in conformity to our rights as a State and to our laws regulating elections. Was there any thing more for *that* Convention to do? Were they chosen for any other purpose even by those, who were allowed to vote for the members? How dare they, then, to go on to frame a Constitution, a law for all time, which is to be binding on those who elected them for other ends, and also on that large portion of the Patriots and heroes—"unpardoned Rebels"—who were not allowed to vote at all. The pretension is without precedent or parallel until the present time of Radical assumption of power in a dominant military or a numerical majority, without respect for Right or a Constitution. As far as we safely can and whenever we can, the People ought to resist that pretension; which we can peacefully do, when called on and allowed to vote: which, I trust, they will do without commotion on this occasion, in support of the great principle of human liberty, that a People have the right to make their own Constitution and not be made subject to one imposed on them by force or fraud by any extraneous power or a fraction of their fellow citizens. You will perceive that I have hitherto discussed this subject, as depending upon the original and natural rights of our People, unaffected by any provision of our pre-existing Constitution; and even on that basis, I deny the authority of your Convention to make or propose a new or modified form of government for us. But the clause in our Constitution, touching its amendment or the call of a Convention for that purpose, is so clear and so precise against any such Convention as we have had as to put the point beyond doubt or argument, as it seems to me. Two modes of amending the Constitution are provided: one through the agency of the General Assembly, proposing an amendment for ratification by a vote of the People which need not be considered here: the other, by a convention, called in a manner prescribed in the Constitution which is the matter now for consideration. It is obvious, that in presenting these two all other modes are excluded by irresistible inference. In respect to a Convention, the words are "No Convention of the People shall be called by the General Assembly unless by the Concurrence of

two thirds of all the members of each house of the General Assembly." In either case, the regular constituted authority of the organized Government is required to initiate an alteration of the government, which, no doubt, was upon the sound principle laid down in the Rhode Island case, in order to avoid popular commotions, revolutions, and uncertainty as to what is the Constitution. If, then, the two modes designated are the only ones, by which the Constitution can be altered, it is clear, that this last, so-called Convention was *not* a *Constitutional Convention*; and therefore its acts are void. Yielding, then, that Mr. Johnson's and Mr. Holden's Convention might by popular acquiescence, adopt for us the measures demanded of it by them, yet it had no existence as a Convention of the People of North Carolina under their Constitution and could not therefore alter that instrument in any of those points which affect our internal organization as a distinct republican State; for example, the basis of representation, the qualifications of the representatives and of the voters, the number and jurisdiction of Courts, the appointment of the Judges thereof, the tenure of their office and that of the Executive or the like. No disquisition can render these points clearer than the short and simple paragraph of the Constitution itself. The conclusion can only be evaded by establishing as a truth that the clause of the Constitution was no longer in force; and that position cannot be true unless it be also admitted, that no other part of it was in force, or, in other words, that, by virtue of the war and its results, we were a people without a Constitution or law of any sort. It necessarily comes to that; and that never ought to be and never can be yielded. Perhaps it would be sufficient, for our present purpose, to say, that even your Convention does not assert such a doctrine, but plainly proceeds upon a contrary one by professing to "amend" our old Constitution, as still subsisting, and not to make one *ab origine* and by designating the old laws still in force as contra-distinguished from those passed by legislatures sitting under the auspices of Secession. Indeed, it is impossible under any aspect of any law, as understood among civilized nations and in modern times, that a whole people can be treated or considered as being without any law or ministers of the law, even by Conquerors. The security of person, and the rights of property, and the obligation of contracts still subsist. Can it, for instance, be supposed for a moment that, upon the death of a proprietor, there is no rule of succession to his real and personal estates and that the first occupant may appropriate them or that no body can? On the contrary I say that the laws of North Carolina were still her laws, including her fundamental law; and, if so, it is then to be deduced, that there could be no Convention to abrogate or to alter that law unless called and chosen in the manner prescribed in it, and that, as a corollary, your Convention had no power in the premises, and its pretended powers and acts ought not be confirmed by the People, if the People could confirm them, but ought to be opposed and rejected. It would seem, that Body was aware of the defect

of its powers, from the submission of those acts to the People, thus seeking the requisite confirmation. But, in truth, such confirmation cannot be derived from that source; for, the same provision in the Constitution, which makes this Convention a nullity, equally excludes the efficiency of a popular majority to annul one Constitution and make another. As the act of a people, living under a constituted government, even the vote of the majority *proprior vigore* ineffectual, without the assent of the subsisting constitutional government and its directions for taking the votes and certifying them, fixing the qualifications of the voters and ascertaining the majority without such previous authority and regulations, the majority, if physically able may overthrow the existing government, but it can only do so by revolution and not as possessing a legitimate delegated office and power. I need not, however, dilate further on this topic as the grounds and authorities on which the doctrine depends, are, according to my recollections, so fully set forth in the argument and opinion given by the Supreme Court in *Dorr's Case*. Even, if the People of a State cannot by their own direct vote abrogate or make a Constitution without the previous sanction of authorities in power under the existing government, as in *Dorr's Case*, much less can they do it, when the Constitution, then subsisting, specially provides two other modes for effecting those purposes and excludes all besides: which is our case. We arrive, then, at these results: That, as the Convention was not *constitutional*, it had no powers and could not make them a Constitution: That, for the same reason, the People have no powers: And, that, as neither the Convention nor the People had *any* power in the premises, by consequence, both together are equally destitute of the requisite power. The Convention was an un-authorized body and therefore no more than a voluntary collection of so many men—a *Caucus*—recommending to the People to adopt by their vote a certain instrument as our *Constitution* a thing to which the People, under our Constitution, are not competent to on that recommendation, and, therefore, the conjoint resolutions and votes of the two bodies have no more effect than that of either by itself. I conclude, it is no Constitution, and cannot be made one by what has been done or can be done now.

What, then, does it behoove our People to do? Why it seems to me, they ought promptly and decisively to reject the whole project. If it be suggested, that, in our experience, all Conventions since those of '76, which formed our original constitutions, have regularly made them worse and worse,—(which, by the way, I believe to be true)—and therefore we had better take this than run further risks, and especially that, at least, those, who approve of the alterations, should give their suffrage for adoption, I reply, No!—The great principle of political and civil liberty, that a People may and ought to make a constitution and government for themselves: that in doing it they ought to be careful to proceed in the regular and peaceful method which is prescribed instead of an irregular, unauthorized and usurped mode, from which uncer-

tainty as to the validity of their doings and consequent commotions arise, furnish the strongest reasons, why *every* man should give his voice against the instrument now proposed and wait for the action of the Legislature in proposing amendments to the People or in calling a Convention, which would have legitimate power to adopt them. Let me, here, address a case, which I ought to have added to the reasons against the efficiency of the popular vote *per se*. I adduce it, because it is level to the apprehension of every one and exhibits in a strong light the correctness of the argument against the popular power—a mere majority—over the Constitution of a nation. The case, to which I allude, is that of the Government of the United States. The Constitution there specifies the modes of amendments: modes, intended to protect minorities against superior numbers. Now suppose, upon this assumption, that the People may do as to them listeth, and that the Majority of the people are the people, and attempt were made to alter the Federal Constitution by a vote of the whole population of the United States. What sort of a Constitution should we have, who could endure it, especially at the South, who would endure it and hold it to be a constitution? So it is under the provisions of our State Constitution. Then, let our people, with one voice, reject it. That will quiet everything and we may begin anew and in a lawful way to make the Constitution what we wish it. But, if approved by the People and proclaimed by the Governor all the questions upon the validity of the instrument and the powers of the Convention arise—questions affecting the right to all the old and new offices and the obligations of the so-called Constitution and no bounds can be set to the disquietude incident to them, nor the embarrassment of the Judiciary.

I have now, I believe, said all I have to say on these subjects. I owe you an apology for the desultory mode of presenting them on the spur of the occasion of receiving your letter and without premeditation as to arrangement, expression and so forth. But, I am sure you will pardon all defects of manner and form for the sake of the cause and the motives which prompt the communication of my opinions to yourself. I think it will not be a difficult matter to make the People comprehend the points arising, and, when understood, to induce them to affix their seal of reprobation on this attempted usurpation. Were I young again and possessed the requisite turn and talent for "agitation" on these questions I would not fail of my duty to my country by timidly keeping silence on such vital subjects. As it is, I am only fit for privacy and peace. But with *your* ability, love of Country, and Influence, I should hope you could do much to bring the publick mind to a right frame upon the matter and stir up the masses to act. If you should attempt it, I shall be gratified at having thrown my mite to your aid by having offered these suggestion. But I beg to say, that I have done so for your own eye only. My name has no authority, and is entitled to but little weight, as I am conscious, and can have little effect, and it would be a

thought of horror to be made, in my retirement, the subject of the libelous, scurrilous and scandalous attacks of unprincipled partisan printers: a class of men—to our shame be it said—who find no fault in one of their own faction nor any virtue in an opponent. From *the hands* of such ferocious and mendacious beasts I hope to keep clear—at least, wish to do so: and pray that my Country may also escape without fatal wounds.

It would gratify me much to know the impression made on your mind by these crude suggestions, especially as I fear their prolixity may detract from the weight which some of them might have if more artistically presented and argued more logically. But, at all events, I trust you will not deny the pleasure a reply will afford to, Dear Sir,

Your friend very sincerely

Edward Conigland Esqr.

THOMAS RUFFIN.

Halifax

No. Ca.

From John D. Whitford.

OFFICE ATLANTIC AND NORTH CAROLINA R. ROAD CO.

NEWBERN, N. C. July 7th, 1866.

By request of the Board of Directors of this Company, I have the honor to furnish you with the enclosed resolutions.

[Address: Hillsboro, N. C.]

[ENCLOSURE]

NEWBERN, N. C. July 7th, 1866.

Resolved that the Board of Directors of the A. and N. C. R. R. Company, do hereby enter their solemn protest, against the action of the former Board of Directors in referring all matters of difference existing between John M. Morehead and the A. and N. C. RR. Company to Hon. Thomas Ruffin for arbitrament; and do hereby Respectfully request the said arbitrator not to make any award under said reference—as the said matter in dispute was pending in court, and the said Morehead had declined to agree to a standing proposition, from the company to refer said matters to three arbitrators, one to be selected by each party and the third to be selected by the other two, whose award should be final between the parties, and that the President be requested to send a copy of this resolution to Judge Ruffin immediately.

JAMES W. CARMEN.

Sect.

From Edward Conigland.

GLEN IVY NEAR HALIFAX N. C.

July 11th, 1866.

I am under the necessity of asking the aid of my brother in answering your letter of the 2d Inst, by being thrown from my buggy on returning from taking depositions. At first I suffered severely, but I am, at present, comparatively comfortable; and I hope that I shall be up in a few days; my anxiety, however, to answer your letter, on account of the short time between this and election, will not allow me to wait till I can write with my own hand.

You do me the great honor, not only in addressing to me such an able exposition of the subject on which your letter treats, but also in requesting an early reply. I trust you will permit me to say that I regard your letter as equal to some of the best of your judicial opinions; and I beg of you to permit me to give it to the public. By confining the knowledge of the authorship to my brother and myself, and suppressing all personal allusions, there would not be the least danger of your name becoming known in connection therewith, unless from internal evidence. It would be copied by my brother or myself, and I could send it to the editor of the Wilmington Journal, who is a personal friend and would make no inquiries as to the writer.

Your views accord with those expressed by some of the ablest men of the Convention, as well as with my own, but you will pardon me for saying that any of us, in arguing the question, must have fallen very far short of the ability with which it is expanded in your letter. I had prepared the skeleton of an argument with which I intended to preface my remarks on the basis question, and I had been seeking an opportunity, during the whole Session, to address the Convention on the subject. When the discussion on the basis question arose, some of my friends thought that it was too late to introduce it; and, in truth I had permitted the time to slip away when with propriety it might have been made. It was my purpose, however, to confine myself to one view, taken by you, namely, even though granting for the sake of argument that the Convention was legitimately called, its powers could not extend beyond those expressly vested in it, namely—to enact such laws as were necessary for the re-organization of the government of the State. According to the views of the most ultra union men, the State Constitution of May 1861 sprung back in all its force so soon as the recent convention had passed the ordinances required for the re-organization of the State Government. The purpose for which the Convention had been called, and the consideration of which it had been limited, were then fulfilled, whereupon it became *functus officio*, and everything afterwards done was a gross usurpation by a body which had no warrant of authority, either from the President, or under the authority of the State.

It was my intention to call one or two public meetings in the county, for the purpose of addressing them on this subject, but while I may be able to sit up in the course of a week, I am sure I will not be able to leave the house in three weeks. I am therefore exceedingly anxious to be allowed to publish your letter. I cannot understand why you should say that your name has but little weight, for it is received with reverence wherever spoken, and has infinitely more weight than the name of any other living man in North Carolina. I would therefore prefer to publish with your name, nor do I think that the vile and unprincipled demagogues who control some of the presses in this State would make you the object of their scurrility. But lest that such should be the case, even to a limited extent, if you will allow me to publish, I will take means effectually to conceal your name.

It was only through the persuasion of my friends that I failed to resign my seat in the convention on the death of my wife, which occurred on the 3rd of March last. She was a woman of a very high order of intelligence, of the most patriotic impulses, and to me the all in all of life. She was stricken down suddenly with pneumonia and carried off in ten days. The knowledge, by your first letter, that my efforts in the Convention met with your approval, was to her a source of the greatest satisfaction. The value I attach to this letter will always be enhanced by the recollection of the pleasure she received from it.

To Edward Conigland.¹

HILLSBOROUGH July 14th, 1866.

My Dear Sir./

I am within this half-hour in the receipt of your letter of the 11th Inst. I lose no time in expressing my very sincere regret at the painful injury under which you are suffering, and the more especially as it deprives your fellow-citizens of your active services in enlightening the public mind in this critical conjuncture of our affairs. I trust your convalescence may proceed rapidly enough to enable you, yet, to take a personal part in canvassing the questions before our People; and I shall be greatly pleased to hear of your speedy and perfect recovery in time to perform the duty of an intelligent Patriot on the occasion.

I am well satisfied that your partiality unduly magnifies the merit of the observations in my late letter to you. It was written on the spur of the moment and without the previous reflection the subject deserved or any revision. It was intended for *yourself*, in the hope

¹This letter is in the possession of Mrs. Fanny Conigland Farinholt.

that the argument might be wrought into some effectual form, when delivered from your lips, after the advantages you would impart to it by arrangement, condensation and illustration—all enforced by the tones of your voice, rendered the more thrilling by a passionate patriotism and holy enthusiasm in so good a cause. I am very sorry, that the cause loses those helps, and the more particularly, as it only leaves for adoption the course suggested by you—that of Newspaper publication. Seeing that *you think*, it may do some good, I cannot withhold the consent you request: But I must adhere to my conditions.

* I have an invincible aversion to any active participation in the political polemics of the day, and have always avoided them; for while I had the good reasons, for the most of my life, of incompatible official position, and another equally good, that I knew my disposition so well that I was sure, if I once began I should keep up the controversy against all comers, until convinced of error. If that course was formerly prudent and proper, it is much more so at my advanced age, in feeble health and retired habits. Therefore I shall rely on your brother and yourself keeping *me* out of the scrape, and shall also rely on your making such emendations of my text as will give to the reasoning the best dress in our power. I do not remember any “personal allusions” made by me. I hope, there are none of a derogatory character; for, I try to avoid such things as much as possible, and none were intended on this occasion. If there be any, strike them out, by all means.

I cannot recall the language I used with respect to the invalidity of the proposed Constitution, if ratified by the popular vote. I fear it was not very precise or perspicuous. It may be more tersely expressed, perhaps, after this manner: According to our system, as essential to regular government and certainly as to what is the Constitution, the existing Constitution and the organized government under it must sanction the proceeding to overthrow the old government and erect a new one by a new or altered Constitution: therefore the People in their natural strength and by force of a majority cannot by their primary vote make Constitutions from time to time; and hence, in this case, the ratification by the People will be null for the want of such sanction, since the, late “so-called,” Convention was not called in accordance with our old Constitution, but was called, in direct opposition to it, by an external, foreign authority, and therefore could not confer on the People the power of making a Constitution. The “so-called” Convention could not either make a Constitution nor impart to the people that power, and whatever may be done by either or by both hath no binding force. This seems clear to me. But suppose it be not certain, but only doubtful, shall we adopt an instrument, as a Constiution, upon which any uncertainty as to its obligation, rests, and upon which so many questions of vital importance to the Body Politic would instantly

arise. Everything is involved in the enquiry. What is our fundamental law—have we a Constitution and which and what is it!

I cannot conclude without making a remark on the concluding paragraph of your letter, which touches your former domestic enjoyments and recent grievous bereavement. I know, I shall not offend your delicacy, when I say, that part of your letter has more interest for me than any and every thing else which has occurred in our intercourse and correspondence. All I have seen or heard of you has led me to admire and respect you as a professional and public man. But this makes me *love* you as my fellow man, with whom I am in full sympathy. With my wife I have lived nearly *fifty seven* years, and from her I have derived nearly all the pleasures and enjoyments of life, my highest moral culture, my satisfaction with my employments and duties and the excitement to their performance, besides being indebted to her care and economy for the breeding of our children and the prosperity of my affairs and the serenity of my temper. She has been the whole world to me, and it has long been my prayer, that God may not leave me behind her. I should feel alone in the world, without her, and never be able to hold up my head, when I could no longer look on her face and get her counsels. You may judge then, how your words on the like topic affects my feelings, and cannot be surprised or offended at the declaration, that you have now not only the respect and esteem, but the deep regards of an affectionate friend in, Dear Sir,

THOMAS RUFFIN.

[Address: Halifax, No. Ca.]

From John M. Morehead.

GREENSBORO 16th 1866.

My Dear Sir—I am alive and that is all—as yellow as a pumpkin—jaundiced from top to toe, and feel as if I cared for nothing on earth.

But I must have some care for those I leave behind me, and I dread to leave them, or to leave home—but I cant live so something must be done. So Dr. Holt has agreed to go with me in the morning to the Va. White Sulphur and my nephew Joseph Morehead will go along too to take care of me. I dread the trip but I must go.

Providence has spared us both for long and useful lives, but our days are drawing to a close and it is time that our houses were set in order. Yours, doubtless, has long since been set in order. Mine has not been, and one of the principle causes of delay has been my affair with the Rail Road in which a large portion of my estate was involved, every Dollar of which was equivalent to gold and indeed a large portion of which was gold, and nothing but gold would do.

As I expect every effort to be made by those now in power to defeat me—regardless of all justice, and as you are now thank God in pretty fair working condition, I do hope and earnestly hope that you will take the matter up at once and make up your award, before they notify you of their dissent, and make it very hard with or without their assent. I doubt not you have all the parts already digested in your mind and it only remains for you to reduce to paper and the matter is closed.

Should I die without its settlement you know what a poor chance my estate would stand—when I myself know so little abt. it—and nobody left that knows anything about it.

Pardon me for being urgent. Imagine our positions changed and I know you will pardon me. I cannot but think this matter has had much to do with my health. Having gone into it and with such a hopeful prospect of doing it with those who were willing to do right, anxiety has been on tiptoe so long that it became exhausted and I am prostrated by the prospect of having to fight it out—with or without the award—with those who determine I shall not have anything—But let us have the awards, it may narrow the field of contest. I will write you when I get located and yr letter assuring me the award was ready and closed—would of itself be equal to two or three white sulphurs.

From Edward Conigland.

HALIFAX N. C. July 20th 1886.

Your letter of the 14th inst. reached me on the 16th, and I mailed to the Wil. Journal on yesterday, yours of 2nd inst. I greatly regret that it was delayed so long, but my unfortunate accident rendered the delay unavoidable. Your letter, however, will appear in time to do much good, and if taken up by the press of the State, will have a very salutary effect on public opinion. My situation prevented me from giving close attention to the copy, but it was prepared for the press by my brother, who made some slight verbal alterations. It is always dangerous to meddle with either the language or the argument of another, we saw nothing that we could amend, and if we had seen anything that we might have considered capable of amendment, we would have hesitated to touch it.

The passage in your last is more condensed and, perhaps, more precise, than the argument, on the same point, in your first, but I think the letter is better adapted to popular comprehension. We really could not insert the last passage without throwing away much of what we considered valuable in the first, and therefore we thought it better to reserve it, so that in case a reply should appear, it may be used in a rejoinder. I will send you a copy of the Article as soon as it appears, and should any reply be made I will send you that. I regret so much

that the time is so short. By a wretched System of rivalry, or something else, the Wil. and Ral. trains do not connect, and all letters to and from this place, *via Ral.* must lie over one day at Weldon.

The aspect of public affairs fills me with an undefined dread which I cannot shake off. I think there is a settled purpose on the part of the Radicals to subjugate the Southern people after the manner of Poland, or of Ireland under James the first, and Cromwell, and to effect this purpose my opinion is, that they will not scruple to call in the aid of the blacks in our midst. We have men in this State who are ready to sustain such a purpose—in this we are but repeating history—the history of all subjugated countries. I call your attention to the following extract from an editorial of the Standard of 17th inst.

"We tell the *Dispatch* in all kindness that he and others of his school are "sowing the wind to reap the whirlwind." It is not necessary to say *how* and *when* the whirlwind will come, but unless a great change shall take place it *will* come with *most destructive force*. We tried to prevent the whirlwind which followed the disunion movement of 1860, but we failed; and we fear we shall fail again in 1867. But we hope for the best though the event should befall us."

All the italics except "*Dispatch*" and "*will*" are mine. The extract is more significant, it means either, that my fears are well founded, or it is idle gasconade. I think he is in earnest, and when the "whirlwind" does come, he (Holden) will, I suppose, "ride upon the wind and direct the storm." I have no doubt whatever, that he, and such as he, are busy persuading the leading Radicals, that the Southern people are on the eve of another revolution, and the Radicals ask only the shadow of an excuse to put their plans in operation. The first purpose is to drive us again to the sword if possible.

But I will not trouble you longer on these matters. At another time, taking advantage of your kind encouragement, I may write at length.

Your kind sympathy for me in my sad bereavement affects me deeply. Your long union with her to whom you pledged your early love is the greatest of earthly blessings, and my own great affliction causes me to regard it as the perfection of human happiness, and so, indeed, it is. I fervently trust that Providence may so order the remainder of your lives, that sorrow may never lie heavily on your hearts.

From Edward Conigland.

HALIFAX N. C. July 21st, 1866.

Your letter appears in the Journal of today I enclose it to you under envelope, lest the paper itself, if directed to you, might excite suspicion.

There are several errors which I have pointed out, and which will

be corrected in the Sentinel, if my letter should reach the editors before publication. Your secret will be preserved throughout.

The letter has already made quite an impression in Halifax, so my brother tells me. I am more impressed with its ability every time I read. My brother, who has few superiors as a judge of such matters, regards it as a very powerful production.

The personal allusions I referred to were made as to myself only. Of course it was necessary to exclude them.

I am able to go about the house on crutches, and hope to be able to walk without their aid, in about two weeks.

[ENCLOSURE]

*Copy of clipping from The Daily Journal,
Wilmington, N. C., July 21, 1886.*

THE LATE CONVENTION AND ITS PROPOSED CONSTITUTION.

The following letter, which we are permitted to publish, is addressed to a member of the late Convention. It discusses the proposed change in the basis of representation, and takes the ground that the Convention has no power to revise the Constitution; that its action in this respect is null and void, and cannot be rendered valid by a vote of the people ratifying the same. Although the letter was not originally intended for publication, the points named are discussed with masterly ability, and, indeed, the whole argument is unanswerable.

[Judge Ruffin's letter with a few changes here follows.]

Marked article on the reverse side of the clipping.

THE NEW CONSTITUTION.

We desire to call the attention of our readers and State exchanges, to the communication on the first page, in regard to the late Convention and its labors. It is hardly necessary to say that it is from the pen of one of the most eminent gentlemen of the State. But a casual perusal will convince the reader of the fact. The arguments are strong, and reasoning solid, and conviction must follow its careful perusal.

We are glad to have it in our power, in connection with the able letter of Judge Manly, and what we have thrown out, to place the public in possession of the letter. If time had been given to the people of the

State, to have had these questions thoroughly canvassed, which their great importance demanded, such convincing arguments as are contained in this letter, must have had much weight with the people of North Carolina. But the Convention, with indecent haste, without sufficient publication, has forced upon the people of the State, questions of the most vital importance.

We ask for the letter an attentive reading.

From John M. Morehead.

WHITE SULPHUR 23 July 66

My Dear Sir—I left home on tuesday and arrived here thursday having stood the travel vastly better than I expected although much exhausted as yellow as jaundice could make me. As yet I have derived no benefit from the water, but hope to do so in a day or two. I can eat nothing and feel as mean and worthless as any jaundiced man can.

Dr. Holt and my nephew Joseph are here taking care of me—we have comfortable quarters at the Dry Creek Hotel about $\frac{3}{4}$ from Spring expect to remain some 2 or 3 weeks or longer if necessary and then right to Rockbridge Alum—

[P. S. It rains here about from 5 to 10 times every day—but they were suffering with drought from Greensboro to Richmond badly this day week. I hope you have rain by this time.

From Edward Conigland.

GLEN IVY NEAR HALIFAX N. C.

July 28th 1866.

I enclose two attempts at reply to your letter of 2nd inst which appeared in Wil. Journal of 21st inst. I greatly fear that you will not have time to rejoin. This letter will not reach you until Monday or, perhaps, Tuesday. Your reply cannot reach me before Thursday or Friday, and the election will be at an end with Saturday. Might you not reply through the "Hillsboro Recorder" without identifying yourself with the writer of the letter, and forward immediately to the Journal? But this is impracticable, besides, I am under the impression that the "Recorder" has ceased to exist. But whether your reply can reach the public before election is over or not, I would like exceedingly to have it, it will be interesting to the people, and will furnish arguments which will bear on the decision of the question before the Courts.

I received the enclosed by yesterday's mail, and sent off, by this day's mail, a rejoinder of nine pages of foolscap. The length of the rejoinder is all, I fear, that can be said for it. I have not attempted to be profound. I had no idea of wading beyond my depth. I was strongly inclined to use a portion of your last letter, but thinking that it might interfere with your rejoinder I did not. I here transcribe it.

"According to our system, as essential to regular government and certainly as to what is the Constitution, the existing Constitution and the organized government under it, must sanction the proceeding to overthrow the old government and erect a new one by a new or altered Constitution: therefore the people in their natural strength and by force of a majority, cannot, by their primary vote, make Constitutions from time to time, and hence, in this case the ratification by the people will be null, for the want of such sanction. Since the late "so-called" Convention was not called in accordance with our old Constitution, but was called in direct opposition to it, by an external foreign authority, and, therefore, could not confer on the people the power of making a Constitution, The "so-called" Convention could not either make a Constitution nor impart to the people that power, and whatever may be done by either, or by both, hath no binding force. This seems clear to me. But suppose it be not certain, but only doubtful, shall we adopt an instrument, as a Constitution, upon which any uncertainty as to its obligation rests, and upon which so many questions of vital importance to the Body politic would instantly arise. Everything, everything is involved in the enquiry. What is our fundamental law—have we a Constitution and which and what is it!"

I hope you will find time to furnish a rejoinder. Your letter has made a profound impression, and has elicited much comment. Hanes of the "Old North State" takes care not to lay it before his readers. My rejoinder is taken up, in a great measure, with the proposition, That, admitting that the Convention was legally called, it exceeded the powers conferred on it, to that extent, at least, its acts are null and void, and cannot be rendered valid by popular Sanction. I also, discuss somewhat your other propositions, sustaining them to the best of my ability.

[ENCLOSURE]

Clipping from the Wilmington Journal.

THE LATE CONVENTION AND THE NEW CONSTITUTION.

For the Journal.

KENANSVILLE, N. C., July 23d, 1866.

Messrs. Engelhard and Price, Editors Journal.

Gentlemen: Several articles have recently appeared in your paper opposing the adoption of the new Constitution. All but two of these

have been editorials. These two exceptions are Judge Manley's letter to his constituents, and a letter published in the Journal of the 21st, and written, as you say, by "one of the most eminent men of the State" to a delegate of "the late State Convention." It is hardly necessary for me to say that I most heartily concur in much that appears in both your editorials and in the letters referred to. My record in the Convention shows this. There is one part of the argument elaborately set forth in the letter of your "eminent" friend, however, that I must say is far from being conclusive to my mind, or unanswerable, as you seem to think. Your friend asserts that the Convention was not a "legitimate Convention, and had no power to make a Constitution." Taking it for granted that the anti-secession ordinance, as it passed the Convention, is true, I admit the argument contained in this letter has much force. I have once, through the medium of your columns, undertaken to show that this ordinance did not assert the truth, however; and I have never seen or heard any argument answering satisfactorily the positions taken in that communication in vindication of the nine delegates who voted against the anti-secession ordinance. It may be strange, I think it, nevertheless true, that the form and phraseology of this ordinance annihilates both, the Convention and the government we have at present in North Carolina; for no one can for a moment contend that Governor Worth, or our Judges, or any of the rest of our civil officers hold their offices legitimately according to the provisions and forms of the old Constitution. It is, therefore, at this point, that I would suggest that it is possible that your friend's argument is neither conclusive or unanswerable. The argument of your friend is founded purely upon the ground that the Convention was constituted by the President in his military capacity, and that the Constitution of the State was legally in force in the State and binding upon the people. As a proposition of law I shall not undertake to argue the latter part of this proposition as an original one, for I confess that I do not see my way clear enough to satisfy my own mind, and it would, therefore, be folly for me to try to enlighten others on it. I may, however, express my regret that your eminent friend has thought proper to give his own opinion upon the point without sustaining it by a single authority drawn from ancient or modern times. The reference to the Dorr case is not in point, for that is founded upon the ground that the old Constitution of Rhode Island was in force, and that the new Constitution has been framed in opposition to its provisions, and adopted by the votes of those who were not entitled to vote according to the old Constitution. The point here is, Was the Constitution of North Carolina in force prior to the assembling of the late State Convention? The Dorr case does not bear upon this point. No civil war in opposition to the Federal government had prevailed in that unfortunate land.

The first part of the proposition is, Was the Convention constituted by the President in his military capacity? What I have to say upon

this part of the proposition is this: the President in his Proclamation in express terms says, that he felt it his duty, as President, to issue his Proclamation authorizing the people to elect delegates, to a Convention to organize a State government, because the fourth section of the fourth article of the Constitution of the United States guaranteed to "every State in this Union a republican form of government." This appeal to the Constitution as imposing the duty upon him is certainly inconsistent with the idea that he was acting in his capacity as "Commander-in-chief of the army, etc." as is assured by the author of the letter in question, and also by the report of the Radical Reconstruction Committee in Congress. For I understand constitutions to be framed for civil, not military governments, and to define the powers and duties of civil, not military officers. Upon this point it occurs to me then that the matter in controversy is between your eminent friend and the President, and although I cannot endorse all the theories that the President has set forth, I prefer for the peace and quiet of the country in its present disturbed condition, and in the midst of all the revolutionary elements scattered broadcast over our land, to adopt in this instance the idea of the President, and recognize our present organized system of government under the authority of the late Convention, rather than adopt the view which might result in chaos and disorganization.

In reference to the latter clause of the proposition as to whether the old Constitution of the State was in force after the surrender of the Southern armies and prior to the action of the late Convention, I have likewise to refer your friend, and yourself as his endorser, to the President's Proclamation, for I confess the light of history is not sufficiently explicit so far as I have read it, to make the subject clear and unquestionable to my mind, and I am sorry that neither you nor the author of the letter have seen proper to put this matter beyond doubt. The terms first agreed upon between Generals Sherman and Johnson for the surrender of the latter's army, it will be recollected were that the State government and its institutions were to be recognized. This capitulation was disapproved by the President, and its terms and conditions rejected, and in the President's Proclamation herein before referred to, he employs this remarkable language bearing upon this very point, which any one may find, if they will read it: "The rebellion" (I prefer the term civil war) "in its revolutionary progress has deprived the people of all civil government." The only definition given by Mr. Webster of the word government, which to my mind seems entirely satisfactory as the proper one for the word as used in this sentence, is, "The system of polity in a State, that form of fundamental rules and principles by which a nation or State is governed." "A Constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined." Now it must be manifest that the President intended the word government in its comprehensive sense, to include the Constitution in this sentence,

for otherwise it is incomprehensible how or why he deemed it necessary for the people to assemble a Convention rather than elect members of the Legislature who might have provided for the organization of the Government, if the old Constitution was still recognized to be in force, and it was meant only to say in the language of Mr. B. F. Moore's disqualifying act, that the officers of the State had forfeited their offices by an act of treason in swearing to support the Constitution of the Confederate States. I shall not undertake to say whether the President is right in the position he assumed or not, but I do say that it is at least a determination of the question authoritatively, and must be considered as settling it until some other branch of the Government of higher authority overrules it, the opinion of individuals to the contrary notwithstanding. And I am inclined to the opinion that it is about as favorable a decision of the question for those whose heart and soul were in the Confederate cause, as I own mine ever to have been, as the decision of those who favor Mr. Moore's anti-secession ordinance doctrine, which makes us all guilty of treason, not only to the Government of the United States, but likewise to the State of North Carolina.

It is but proper, therefore, that I should say that I think your eminent friend, in his own opinion, that the old Constitution was in force at the time of the assembling of the Convention, takes direct issue with the President. It will be admitted, I suppose, that if the Constitution was not in force, that there was no mode prescribed by which the Convention could be called to organize a State Government, and if one had not been called, the consequence would have been that the State must have remained under military government. Am I not right as to the construction of the President's language and meaning?

If the views herein presented are entitled to consideration, the proper course for the people of the State to pursue, in reference to the new Constitution, is to vote for or against it upon its merits. Many of its features I like, and consider them improvements upon the old Constitution. There are others, however, that I consider exceedingly objectionable, so much so that I felt constrained to vote in Convention against it as a whole, as I shall do at the election as one of the people. The argument of your friend against the change of the basis of representation as proposed in the new constitution, I think, is conclusive and forcibly put. This objection alone to the new Constitution ought to be sufficient to cause our people to reject it as a whole. There are, however, other objections which I have not seen referred to in your paper, which render the instrument very objectionable. The alteration of the 9th section of the Declaration of Rights is among the most prominent, to my mind. I have always had a great reverence for *magna charter*, and I have ever considered the right of trial by jury as the dearest right secured by that venerable instrument. This alteration gives to the Legislature the power to take away this inestimable right in all cases of petty misdemeanors, a very comprehensive term,

and may be construed to include a very large class of offences. This is not all. Another amendment proposed gives to each district the right to elect its own Justices of the Peace. It is hardly unreasonable to suppose that it is possible some of these Districts will at some times have a bad man imposed upon them as their Justice of the Peace. If the Legislature should, therefore, think proper to give jurisdiction of these petty misdemeanors to a single Justice of the Peace, it is easy to perceive that a reign of terror and tyranny may be inaugurated under this new Constitution. To this dangerous innovation I can never give my assent.

There are several other features of this new Constitution to which I have serious objections, most of them, however, have been adverted to by you in urging your objections to the adoption of that instrument. I shall, therefore, not weary your patience by referring to them in this letter, already much longer than I intended it to be.

In conclusion, permit me to say that if you shall think, upon perusal of this, that it is worthy of the consideration of the public, you can use it as you may think proper. It is certainly important that the people should take an interest in the organization of their Government upon proper principles. Never was there a time when the people of any country were more interested in trying to preserve the great principles of Democratic representative government. "Hope long deferred maketh the heart sick." A little more patience and perseverance on the part of the people, with a strict adherence to principle, and a proper degree of caution and prudence may, however, yet lead us through the darkness of the present into the light of civil liberty.

Very respectfully,

WM. A. ALLEN.¹

[ENCLOSURE]

Clipping From the Old North State.²

July 24, 1866.

THE NEW CONSTITUTION.

The *Wilmington Journal* attracts our attention to a long and able letter in the columns on this subject, written by one of the ablest men in the State to a member of the late Convention. The writer urges the people of the State not to ratify the New Constitution, arguing against it mainly on two grounds; first, because white population alone is made the basis of representation in the House of Commons; and secondly, be-

¹A prominent citizen of Duplin County.

²Lewis Hanes, the editor of the *Old North State*, had been private secretary to Holden while the latter was provisional governor.

cause the Convention having been called by military authority for certain purposes it was *functus officio* upon the accomplishment of those purposes, and therefore, had no power to make the changes in the State Constitution which it did at its next session. The writer contends that population should have been made the basis of representation in the House of Commons, without reference to color. He does not contend for negro suffrage, but the contrary, yet he argues that as "all persons are equally affected by the laws that may be enacted," all are equally entitled to be considered in fixing the basis of representation. We gave our opinions on the basis question during the session of the Convention, and therefore, we shall pass lightly over this part of the letter. We propose, however, to notice briefly the writer's objection to the powers of the Convention.

We are one of those who never believed in the right of a State to secede, or believed that the Government of the United States was wholly federal in its character. We believe that the people are the source of its powers, and that its laws are applicable only to its citizens, and not the States in their corporate capacity. In the execution and maintainance of its laws it is independent of the State governments. It is true that it depends for its existence in some degree—so far as the election of Senators and Presidential electors is concerned—upon the State governments. But even in *these* particulars the Constitution has not left the government of the United States at the mercy of the State governments. It has laid its foundations upon other principles, and for the preservation of its existence has taken other securities. It has gone beyond the State governments, and has bound the citizen of the State himself. It has laid its hand upon the individual consciences of men.—Having been established and ordained by the people of the States to be "the Supreme law of the land," it requires every citizen before he can hold any office under the State governments to take a solemn oath to support the Constitution of the United States. The members of the State Legislatures, therefore, are as much bound in conscience and in honor to elect United States Senators, and provide for the election of Presidential electors, as they are to elect State Judges, or to provide for the maintainance of the State governments.—In this respect, then, the Constitution has made the State governments a part of the Federal system. They cannot be destroyed without destroying or subverting the National government itself. As long, therefore, as the Union exists under the Constitution, as established by the Fathers, the State governments must exist, and their rights must be respected, for, in the exercise of the powers actually reserved to them in the Constitution, they are as sovereign as the General Government—each being supreme within its legitimate sphere.

There is no power in the Constitution to wage war against the States as States. It is true that the government is vested with all the power necessary to preserve its own existence against the attacks of either

foreign or domestic enemies. It may call forth the militia and use the army and navy for the purpose of repelling invasions, quelling insurrections, or executing the laws of the United States. The late war was waged against the people of the Southern States under the grant of power to quell insurrections and execute the laws of the United States—it could have been waged under no other. The State Constitutions being, as we think we have shown, as much a part of the Federal system as the Federal Constitution itself, the former could no more be destroyed by the war than could the latter. The idea of the conquest of a State under the power to quell an insurrection is not only, as we have said before this, an absurdity, but it is a legal impossibility.

When, therefore, at the close of the late war President Johnson declared by proclamation that the people of the States lately in insurrection had been deprived of all civil government, he could only have meant to say that all administration of the civil government in those States was at an end. He did not say, and did not mean to say, that the Constitution and laws of this State as they existed on the 20th of May 1861, had been destroyed—in fact, he said just the contrary. He only, by that proclamation, declared that all the laws of the State enacted during the war were nullities, and even on this point we think a powerful argument might be made to show that he was in error. We think there are very strong grounds upon which to maintain that the late State government was a government *de facto*, and that, consequently, all its enactments which were not inconsistent with the Constitution of the United States were valid to all intents and purposes. But the President held that they were not thus valid unless they should be re-enacted by the State—which was done—and that all the officers of the State Government had forfeited their places by treason, in having not only engaged in hostilities against the United States government, but in having abjured their allegiance to it, and the people of the State submitted to that decision.

Here then was the State, with her Constitution and laws in full force, but with no administration of her laws, and no means of setting the machinery of her civil government in motion. This difficulty, it is true, was easily solvable upon the hypothesis—the true one we are inclined to think,—that the late State government was a government *de facto* which should have continued to exercise its functions until the Convention assembled. If the Convention had been called in that way, there could have been no question about its powers—it would have been a legal convention called in accordance with the provisions of the Constitution, and its powers would have been limited only by the prohibitions upon the State in the Federal Constitution. But as the late State government was not *allowed* to exercise the functions of government after the surrender of the Southern armies, there was no regular way left in which a convention of the people could be called, and the administration of the civil government restored. Yet as it was

held to be indispensable that such a convention should be called some other way had to be, and was found out. Provisional governments were established by the President, and by his Provisional Governor in North Carolina the late Convention was called.

The question arises whether the irregular manner in which it was called in any way affected its powers. We do not think that it did. If it was a valid convention for any purpose, and the author of the letter in the *Journal* admits that it was, then it was valid to all intents and purposes, as if it had been called in a regular manner. In proof of this we beg leave to refer to several analogous cases in English history. The Constitution of North Carolina provides that no convention of the people of the State shall be called except by the concurrence of two-thirds of all the members of each House of the General Assembly. So under the English Constitution, no Parliament could be summoned except by a Royal writ under the Great Seal. But the Parliament which restored Charles II, was in fact but a mere convention of the people, convened in the absence of the King from his Dominions without the semblance of a Royal writ. Yet this body, thus irregularly assembled, continued to act as the Parliament of England for eighteen years, and the validity of its acts was never questioned in any of the English courts. So, too, the convention which declared that James II had abdicated the throne, and elected William and Mary, Prince and Princess of Orange, to fill the vacancy was a body assembled without any of the formalities required by the English Constitution. It was, in fact, called by the Prince of Orange himself, in the absence of the King, by a letter under his sign manual, while in the exercise of a mere Provisional Government, and in that respect it bears a very strong analogy to the late State Convention. Yet the most important functions of legislation ever performed by any English Parliament, that of changing the Royal line of succession, was done by this Convention. It subsequently resolved itself into a Parliament, and as such enacted the great Bill of Rights, and did more than any Parliament which preceded it to settle the English Constitution and perpetuate English liberty; and its authority was never questioned in any of the Courts. It is true, that during its sittings there was some discussion among its own members as to the validity of its powers, but the question was speedily settled by a speech from old Sergeant Mayard, the most learned lawyer of his time.

In reply to those who objected to the powers of the Parliament because it was not summoned in the regular way, by a Royal writ, he said that he was reminded of a man who was lost in a wilderness, and stood crying, "the King's highway, where is the King's highway, I will walk nowhere except upon the King's highway," when it was obvious that if he would only move upon the King's highway he would never move at all. A man lost in the wilderness, he said, should take that road which would carry him home. We are now, he said, out of

the beaten path, in consequence of this revolution, and we should pursue that course which will lead us as rapidly as possible to the old beaten track. So, too, by the consequences of the late revolution we were thrown off the beaten track, and as we had, by the decision of the Federal authority, no legislature in existence, and no power competent to call one, it is quite plain that if a convention had never been called until it was called in the regular way it would never have been called at all. It having been called by provisional authority, it was as lawful body for *all* purposes rightfully pertaining to such convention, as it could possibly have been for *any* such purposes. If it was not competent to make the changes in the constitution which it made at its late session, then it was not competent to make those which it made at its first session. Either this Constitution will be, when ratified by the people, valid as the organic law of the State, or the present Legislature and Gov. Worth are nothing but usurpers, for upon the validity of the acts of the convention depends their right to hold the offices which they are now filling, and the functions of which they are at this time discharging.

In support of his position the author of the letter in the *Journal* refers to *Dorr's case*. In this we think he was unfortunate. To us there seems to be but little analogy between the two cases, and the argument to be drawn from it is all against him. In the Rhode Island case there was no interruption of the regular order of things by any extraneous causes. There was a Governor and a Legislature regularly elected in pursuance of the Constitution of the State. No one doubts that if *Dorr's* convention had had the sanction of these, the regularly constituted authorities, it would have been a lawful body, and its acts binding. But it did not have such a sanction.—*Dorr*, without the consent of the constituted authorities, but acting upon the hypothesis that the people of the State were sovereign, and had the right to change their government whenever and *however* they chose called upon the people to assemble in primary meetings and elect delegates to a State Convention to form a new State Constitution. The convention met and formed a new Constitution, and under that Constitution a Legislature and a Governor was elected, *Dorr* himself being elected Governor. Governor King and the old Legislature, however, refused to abdicate in their favor, and a contest ensued. The case was finally carried to the Supreme Court of the United States, and the court, after able argument from both sides, decided that "the people of a State cannot by their own direct vote abrogate or make a constitution without the previous sanction of authority in power under the existing government."

This decision, we think, was entirely correct. *Dorr's* proceedings were, in our opinion, revolutionary. But suppose there had been no such constituted authorities in existence in Rhode Island—that from any cause there had been no Governor, no Legislature, no clerks, sheriffs, or other officers as was the case here, and the Federal Government had

authorized Dorr as Provisional Governor to call such convention, would not the decision of the court have been otherwise? Indeed, we think it exceedingly doubtful whether his authority and that of the people who acted at his call would ever have been questioned at all. How then, can there be any question about the powers of this Convention? Here the Federal authorities decided, that though we had a constitution and laws, yet we had no constituted authorities because all the offices of the State government had become vacant in consequence of the part the holders of them had taken in the rebellion—and the government had the power, if not the right, to make such decision. We think, then, that the decision of the Supreme Court fails to sustain the writer. There is no analogy between the case of Dorr and ours, while in the English cases to which we have referred the analogy is almost complete, and fully sustain us.

The late convention did not derive its powers in the slightest degree from the military authorities under whose auspices it was called through the provisional Governor. It could only have derived its powers from that source upon the hypothesis that the State was a conquered province, which we *utterly* deny, and which we think we have shown could not be the case. It is true, that if the State had the right to secede, and did secede, then she is a conquered province, but we did not understand the argument of the writer in the *Journal* to be based upon that hypothesis. Indeed, we do not see how any man can base an argument upon that hypothesis now, whatever may have been his opinions upon the question of the abstract right. The right was denied by the Government of the United States, and it succeeded in establishing its construction of the constitution which *practically* settles the question. And not only this, but the late State Convention completely abandoned that theory by ordaining that the ordinance of secession was, and always had been null and void. Its powers were derived wholly from the people of the State, as a State in the Union. If it could exercise any powers at all, it could exercise all the sovereign powers of the people of North Carolina which have been not delegated by them to the government of the United States, and was competent, therefore, to do all that it has done. It was a lawful and regular convention of the people of North Carolina, but called in an irregular way, and by an extraordinary authority in the absence of the regularly constituted authorities of the State.

Another ground taken by the writer in the *Journal* is that the convention was not a convention of the people—that “the delegates were not the choice of the people; for in the proclamation calling it, the qualifications of the persons who might be eligible, and those of the persons who might vote for them, were strictly presented in a manner variant from our fundamental law, excluding from each class a large portion—some would say the best portion—of our qualified citizens.” There may be, and there doubtless is, some force in this, but certainly

not enough that any serious objection should be raised to the action of the convention on that ground if no others existed. The President had issued his proclamation, proclaiming a general pardon and amnesty to all who had participated in the civil war, with the exception of thirteen distinct classes of persons, none of them very numerous in North Carolina.—many among these classes had, before the day of election, received special pardons. If all those who had been pardoned under the proclamation of General Amnesty, and all of those who received special pardons did not participate in the elections it was their own fault, and they ought not to complain now if they have not been truly represented. Of the excluded classes who could not possibly have participated in the election we do not think that all told they amounted to more than two thousand men—perhaps not that many—in the State, which is a very small proportion of the whole number of voters in the State. Those who were excluded are now, at least the most of them in a condition where they may vote upon the ratification of the new constitution if they think proper to do so, and surely if they are satisfied with the constitution itself they need not, and will not oppose it upon that ground.

Having expressed our views upon the basis question at the time it was under consideration in the Convention, we will not go into any elaborate discussion of it here. We regarded it at the time as a fair compromise between the East and the West. We admit the force of the writer's argument against the white basis, and in favor of including *all persons* in the basis of the House of Commons. As an abstract truth we are prepared to subscribe to it, but it is certainly impracticable in the present case, or at least it could not be adopted without manifest injustice to the West. Regarded as a practical question, we think this writer takes an extreme *Eastern* view of it, and as such we should have been compelled to oppose it. We were equally opposed to the extreme *Western* view which proposed the white basis for both Houses. We thought, and still think that the present arrangement was a fair compromise between the people of the two sections, and sincerely hope that the new Constitution will be adopted by the people.

From all that we can learn from our exchanges the opposition to it in the East is very general. We do not remember to have seen it advocated by a single Eastern paper, and it is openly opposed by many of them. We would, then appeal to the people of Western North Carolina to rally to its support. We think, with some slight objections to some of its details, that it is an excellent Constitution and that it gives the Western people all that they have any right to claim, and certainly as much as they will ever get from any other Convention. The Constitution now before them being upon the whole a *very good* one it should be adopted by all means to save the expense of calling another Convention. We assure them, if our opinion is worth anything, that it was made by competent authority, and that there cannot be the least difficulty on this point.

From Edward Conigland.

HALIFAX N. C. July 30th, 1866.

Hon. Thos Ruffin.

Dear Sir:

I was inexpressibly pained on reading the enclosed paragraph, which I cut from the Sentinel of last.¹ It is due to myself to state that only three persons have heard from me the name of the author of the letter, and that I was almost necessarily compelled to make it known to them.

In the first place my inability to copy it, compelled me to have recourse to my brother's assistance. He assures me, and I certainly believe him, that he has not made known the name of the writer to any person. Upon consultation between my brother and myself, we deemed it absolutely necessary to make known your name to the Editor of the Journal. The letter was published before he recd. this information, but feeling well satisfied that it would excite much comment, we thought that in order to put Mr. Engelhard on his guard, and to keep him from making blind statements, your name should be communicated to him—knowing that such things are sacred with Editors.

During the time I was confined to my room, a young man who is studying law with me, and who was always deemed by me worthy of confidence, came in—the letter was on the bed, the signature exposed. It occurred to me that he might unintentionally have taken it in with his eye, and perhaps some news of the body of it also. I then read it to him under the opinion that, with him, the secret would be inviolable. I cannot believe that either he or Mr. Engelhard, has made the authorship known, and I am in hopes that the paragraph is simply conjecture. I requested the Sentinel to publish, but without giving the slightest intimation as to when the letter was written, or by whom.

Knowing how anxiously you desire to keep your name from the public, and that you would not have consented to the publication of the letter, had you not been assured that the authorship would not be divulged, I have deemed it due to myself to make this explanation. The paragraph may be the result of conjecture altho I confess that it looks too precise for that. At any rate I trust you will be satisfied that I have not, under the circumstances, betrayed your confidence.

With the highest regard and respect

Very Truly Yrs.

EDWD. CONIGLAND.

It is clear that your name as the writer must continue conjectural. No person who has the means of knowing the truth, will pretend to affirm it, and therefore it must remain in conjecture. E. C.

¹Friday, June 27th.

[ENCLOSURE]

Rumor.—It is rumored that the able letter, published by us, some days ago, in relation to the new Constitution, and the powers of the Convention, was written by the Venerable Thomas Ruffin, late Chief Justice of the Supreme Court. It was a private letter written to a personal friend, who was a member of the Convention. We have no authority for saying that the rumor is correct, nor is it at all important, if its doctrines are well founded. It is a matter of great importance, and should be carefully considered, whether the ratification by the people, can validate the instrument.

From Edward Conigland.

HALIFAX N. C. August 2nd 1866.

I greatly fear that I must annoy you by the frequency of my letters, I will endeavor not to trespass on your patience so often in the future.

I would enclose to you the Sentinel of the 30th and the Standard of 31st; both recd yesterday, did I not believe that they will be handed to you by some friend. The Standard contains a characteristic article, directly referring to you as the writer of the "famous letter" on the power and authority of the late Convention. In endeavoring to make political capital by ascribing the authorship to you, the editor reckons without his host. The very suspicion that you are the writer, will cause many votes to be polled against the Constitution which would otherwise be neutral.

I need not say again that I regret very deeply that any rumor should be in circulation ascribing the authorship to you, I am convinced that if the authorship ever was divulged it must have been by the Editor of the "Journal" and this I cannot believe. I think therefore that the whole matter rests upon conjecture. The Standard refers to the Sentinel as positively admitting the authorship. The Sentinel had no more authority to "admit it" than the Standard—it had no knowledge of the writer. I asked the publication of the paper simply as a citizen opposed to the Constitution, I did not give to the Sentinel the most remote intimation, as to whom, or by whom, the letter was written. But the Sentinel makes no admission of the sort, and the Standard resorts to a bare-faced falsehood in order to make an opportunity of attacking you.

The communication of "Orange" in the Sentinel of Monday last, is very well and carefully written, and evinces very considerable ability. It is, I think, from the pen of Mr. Phillips, and takes the position that the modes provided in the Constitution for its amendment, do not exclude

other modes. This I think is very untenable. The other point is that while the Constitution may have been in force, there were no civil officers to administer it, and *ex necessitate* the action of the Prest. was legitimate—it was a new principle to the people to elect delegates to a Convention, of which they availed themselves and made the Act their own etc.

I trust that notwithstanding the turn which the matter has taken, in reference to your name, that you will give to the public another communication, even though the Constitution should be ratified by the people. I anticipate a ratification, as the appeals to the self interest of the West will carry it. But a great principle is involved, and, I think, it is due to yourself, and to the public, to sustain your views by another paper at least. I will aid you in every way I can by the pen, and otherwise if at all necessary. A gentleman cannot well notice anything that appears in the Standard, certainly not personally. And a *gentleman* will not write or say anything disrespectful of you.

If we are allowed to retain our status as citizens, the West will, by adopting the Constitution, inaugurate an agitation it little dreams of. The East will soon be unanimous for negro *suffrage* and representation as the direct result thereof; and in this they will finally succeed. No set of men ever willingly submit to injustice, or part with power without a struggle.

I enclose, herewith, a communication to the journal by myself. I trust, if you favor us with another paper, that you will take in "Orange."

I will not trouble you any more for the present unless it should be absolutely necessary to do so.

[ENCLOSURE]

The Daily Journal.

Wilmington, N. C., July 31, 1866.

The Rejoinders of Mr. Allen and "The Old North State" to the letter which Appeared in the "Journal" of the 21st inst., on the Power and Authority of the late Convention, briefly Considered and Discussed.

July 28th 1866.

Messrs. Editors:—

I am not surprised that the letter discussing the power and authority of the late Convention to alter or revise the Constitution of the State, which appeared in your paper of the 21st instant, has elicited much comment.—That letter has made a profound impression on the public mind, and the best evidence of its ability is the fact that the able gentlemen who have published replies thereto have, it must be conceded,

failed to weaken, in any perceptible degree, the reasoning by which its positions are fortified and sustained.

The argument of the letter on the proposed change in the basis of representation is, it must be admitted admirable. This position is fortunate enough to be approved by Mr. Allen. THE OLD NORTH STATE does not attempt to meet it, contenting itself with a reference to its views on that question heretofore expressed. Mr. Hanes is a good strategist as well as an able writer, and recognizes the force of the old adage, "discretion is the better part of valor." Neither he, nor any other man can, upon general principles, successfully answer the reasoning of the letter on the "basis question."

But the letter deserves especial consideration as a profound constitutional argument; and it may not be amiss to restate the propositions therein submitted. They appear to me to be as follows:

First. That the Convention was not a legitimate Convention, and had no power to make a new Constitution, or to alter or amend that which we had and have.

Secondly. That as the Convention had no legitimate existence, its acts cannot be rendered valid by popular sanction.

Thirdly. Admitting that the President of the United States had the power to legitimately to call a Convention of the people of the State, still, as the Convention so called by him was limited to the consideration of certain subjects, it had authority to consider such subjects only; it was a *limited* and not an *unlimited* Convention, and every attempt thereof to exercise powers not conferred upon it is null and void.

I propose principally to consider the third proposition.

The NORTH STATE lays down the premiss: "If it was a valid Convention for any purpose, then it was valid to all intents and purposes." A more erroneous proposition than this or one less logical could not be submitted to public consideration. It is clear to any capacity, that the Convention may have been valid for the purposes for which it was called, and without any authority to consider any thing whatever not embraced therein. The Convention of 1835 was limited by act of the General Assembly to the consideration of the subjects in said act specified. Will Mr. Hanes pretend to say that if it had proceeded to consider subjects not specified in said act, its action would have been binding? The words of Judge Gaston are precisely in point, to-wit: "Such a Convention as is proposed in the act of Assembly, and no other has been called; and therefore that act, so sanctioned, must be regarded as our power of attorney. If we transcend the limits, or refuse obedience to the conditions therein provided, we are not the Convention called by the people, *but a self-constituted body.*" In that Convention the very question was mooted, whether if it should transcend its limits, its action could be rendered valid by the sanction of a popular majority. The enquiry was not pursued, it was not necessary to pursue it, for that

body was too patriotic to arrogate to itself power not conferred upon it. But Judge Gaston clearly intimates, that, acting, "as individuals at the polls," the people could not render valid any such assumption of power.

The late Convention was called by the Provisional Governor under the instructions of the President. The proclamation of both clearly defined the purpose for which the Convention was called. The delegates were elected to effect, or consider, that purpose, and no other. If it should be alleged that the call was sanctioned by the people, it must be admitted, to use the words of Judge Gaston, that it was *sanctioned precisely as it was proposed.*" And when the Convention transcended its limits, it was no longer a "Convention called by the people, but a *self-constituted body,*" with no authority derived from any source, either from the President, the Provisional Governor, the people, or the Constitution of the State. In the words of your correspondent, such exercise of power is a "pretension without parallel or precedent until the present term of Radical assumption of power in a dominant military or numerical majority, without respect for rights or the Constitution. As far as they safely can, and whenever they can, the people ought to resist that pretension."

The question arises, "What limits, if any, were prescribed in the proclamations calling the Convention?" By the proclamation of June 13th, 1865, the President appointed William W. Holden Provisional Governor of North Carolina, "whose duty it shall be" to prescribe rules, etc., for "convening a Convention," the delegates to be chosen by the loyal people of the State, "for the purpose of altering or amending the Constitution thereof, and with authority to exercise, within the limits of said State, all the powers necessary and proper to enable such loyal people of the State of North Carolina to restore said State to its constitutional relations to the Federal Government." No one will pretend that the President had any authority, under the clause of the Federal Constitution which guarantees to each State, "republican form of government" to call a Convention to regulate the whole internal affairs of the State, but only to take such action as would restore the State to its "constitutional relations to the Federal Government." In the proclamation of the Provisional Governor, issued August 8th, 1865, calling the Convention, the purpose declared is, "that said State may be restored to its relations to the Federal Government." Now, by the "Peace Proclamation" of the President issued in April last, I think the State declared to be "restored to her constitutional relations to the Federal Government." The Convention had effected the purpose, and the only purpose for which it had been called, and for which the delegates thereto had been elected, its authority was at an end, and all that it afterwards did was the action of "a self-constituted body." Well may your correspondent, of 21st inst., ask, "How *dare* they, then, go on to frame a Constitution, a law, for all time, which is to be binding on those who elected them for other ends, and also on that large portion

of the patriots and heroes "unpardoned rebels" who were not allowed to vote at all."

I do not admit, and Mr. Hanes is mistaken in supporting the writer of the letter so much commented on, admits, that the call of the Convention was valid for *any* purpose. The argument simply is, that, conceding that call to be legitimate, the action of the Convention must be confined to the purpose therein specified, and every thing done by it beyond the power conferred on it, is null and void. Let those who held that the acts of the Convention, beyond the scope of the power conferred on it, are valid, make it known to the people "*from what source the authority to pass such acts, was derived!*"

It is not necessary to discuss the first proposition, for whether the Convention was legitimate for any purpose, or only for the purpose for which it was called, we arrive practically at the same result. It is admitted that the terms upon which Mr. Johnson insisted, as a basis of restoration to the Union, have been conceded, or exacted, beyond the power of re-call or revocation. But he is a poor student of Constitutional history, who refers this action to any legitimate proceedings had under the fundamental law of the State, or of the United States.

But whether the Convention was illegitimate in its conception and formation, or whether it simply exceeded its powers, the second proposition, in either view is impregnable to assault. The popular sanction cannot render valid any action of the Convention which had no legitimate basis, either from the fact that it was illegally called, or that it exceeded the powers conferred on it.

The President of the United States, the late Convention, and Mr. Hanes, all emphatically concur in the doctrine, that the moment the State was restored to her "Constitutional relations to the Federal Government," the Constitution of the State which was in being at and immediately before the adoption of the ordinance of secession, May 20th, 1861, except in so far as the same had been modified by the Convention under the call of the President, sprung back into full power and governing force. The President had no further use for the Convention, it had served his purpose, and he, in effect, dismissed it. It continued to act no longer under his orders; it must then have continued its existence under the Constitution of the State, or it must have continued as a "self-constituted body." If it continued as a self-constituted body, which in fact it really did, the argument that its acts may be rendered valid by the popular sanction, scarcely rises above the dignity of contempt. Such an argument is simply to hold, that although the people have bound themselves by their fundamental law, to a certain and precise mode of amending the same, they may at any time, amend the same law, in another and different mode. The people having prescribed a mode of amending their fundamental law can amend it only in the mode so prescribed. This is the doctrine enunciated in the "second proposition, and is sustained precisely to the letter," by the "Dorr case."

The Constitution of Rhode Island being in full force, the people of that State called a Convention contrary to the provisions thereof, and sanctioned the Constitution adopted, by a majority of the popular vote. I write from memory only, as I have not the history of the proceedings by me. The Supreme Court of the United States held, as quoted by Mr. Hanes, that "the people of a State cannot *by their own direct vote*, abrogate or make a Constitution without the previous sanction of authority in power under the existing Government." The Constitution of North Carolina was, it is conceded, in full force when the Convention wholly unauthorized thereby, proceeded to amend and revise the same, the people cannot, therefore, "by their own direct vote" render those amendments valid, because they want "the previous sanction of authority under the existing Government." The "Dorr case" is then precisely in point, sustains the proposition in every respect, and it is incomprehensible to me how Mr. Hanes, with his views, can say otherwise.

The historical references of Mr. Hanes are entirely inapplicable, as may be seen by any reader who will consult chapter 2d, entitled "Of the Parliament," vol. 1st. Black. Com. No parallel can be drawn between the state of things with us, and the state of affairs in England under Charles the 2d and William the 3rd. Blackstone says that each case, referred to by Mr. Hanes, worked a *revolution* in the government. The accession of William the third to the throne was a complete revolution, and is always referred to in history as "The Revolution of 1688," and even then, it was regarded as necessary to pass what is called "healing acts," to render valid the acts of the Parliament referred to. And "it was at that time a great doubt among the lawyers whether even this healing act made it a good Parliament." But the most complete answer to those references is to be found in the fact, that here there was no revolution, that the States still preserved their character as States, with their Constitution and laws in full force, and that, with us, the said Constitution and laws were in *active existence*, as admitted by Mr. Hanes himself, when the Convention attempted to enact certain alterations and amendments in the fundamental law, in a mode at variance therewith and totally unauthorized thereby.

If I am correct in my position thus far, then I submit, that the views of Mr. Allen are thereby completely met. Whether the President called the Convention by virtue of his military authority or under the fourth article of the Constitution of the United States, which guarantees to each State a republican form of government, is all the same for the purposes of my argument; for the question is not on this point by what power, or under what authority he called it, but whether the Convention exceeded the powers conferred on it in that call. That it did do this has been proved to a demonstration.

But Mr. Allen admits, that if the "Anti-secession ordinance, as it passed the Convention, is true," the proposition that the Convention was not legitimate, and had no power to make a Constitution "has much force." Now the gist of Mr. Allen's argument is, that the "Anti-secession ordinance" is not true, and that, in fact, Mr. Johnson, in calling the Convention, exercised only the powers of a conqueror, and his call was, therefore, legitimate. This is the argument analyzed. A sufficient answer thereto, it needs no other, is the fact, that the President, and the Convention ignore the argument and, insist on the very contrary, to wit: that the State was remitted to all rights under the Constitution and laws, the moment her Constitutional relations to the Federal Government were restored. There is no necessity then to attempt an answer to objections which, for the purposes of this argument, must be regarded as definitely settled.

But says, Mr. Hanes, "it," the Revised Constitution, "gives the Western people all that they have any right to claim, and certainly as much as they will ever get from any other Convention." This, after all is, "the milk in the cocoanut". The Western people get "all that they have any right to claim," and therefore, they should vote for the Constitution *per fas aut nefas*. This is not precisely the language of Mr. Hanes, but it is, in fact, the analysis of his last paragraph. His assurance that the Constitution "was made by competent authority," is an evidence, to say the least, that he is on very good terms with himself, and I suppose the question must henceforth be regarded as settled by the Western people, to whom the language is addressed. But this will not satisfy the consciences of men—each man ought to act and think for himself, according to the lights before him, with a due sense of his responsibility to God and his country. The whole action of the Convention, during its last session, and for the greater part of its first was, in my opinion, a gross usurpation at variance with the fundamental law of the land, and subversive of the rights of the people as in that law set forth and declared. He who votes to sustain that Convention because he approves of it or may be benefited by its enactments, sells his birthright for "a mess of pottage," sanctions the doctrine, that an unauthorized body may change the fundamental law of the land at its mere will and pleasure, and aids in forging fetters for himself and his posterity.

A CITIZEN.

*Extract from the Sentinel.*¹

For the Sentinel.

THE AMENDED CONSTITUTION.²*Messrs. Editors:—*

I observe that you have transferred to your columns an elaborate article which first appeared in the *Wilmington Journal*, the object of which is to show that the late Convention had no power to change the Constitution of the State, *even with the ratification by the people at the ballot box!*

So far as that article is an appeal to popular prejudice; so far as in heated language it counsels the people not to be “dragooned” into an adoption of the Constitution, to “scorn” an instrument made by men in the “guise” only, of their representatives, and to await such time as may allow them to choose “good men” for a Convention; in so far, I will not follow, or emulate it. Surely a Constitutional question does not require such assistance for its settlement,—may indeed be better discussed without it. I will dismiss this retinue with the remark, that the Convention of 1865 was quite as much the representative of the people of North Carolina as was that of 1861. So far as concerns that cool expression of public opinion which alone may, in the view of philosophers, be binding upon the people, it matters not a grain whether they are plunged into such a condition of virtual coercion as existed in North Carolina in May, 1861, or are surrounded by the circumstances of September, 1865. I may add that the action of the late Convention will bear favorable comparison with that of the former,—in any and every aspect; as regards questions of finance, and the issuing of treasury notes; as regards questions of magnanimity, and the administration of test oaths; and also as regards measures, proposed or matured, towards an amendment of the Constitution of the State. I will freely adjourn these matters to the bar of posterity. When questions are made, specially when made in language of denunciation as to the conduct of a certain body of the representatives of the people, it is natural and just to inquire how that conduct will compare with that of another body, confessedly composed of eminent citizens, and perhaps something of a standard in the view of the objector.

¹From the issue of July 30, 1866.

²This article was commonly supposed to have been written by Samuel F. Phillips. If so it was far below his usual standards both in respect to form and to logic. It also was in flat contradiction of the opinions expressed by him five years later as to the power of the General Assembly to submit a call of a convention to the people by a smaller majority than that specified in the constitution. Such a large proportion of those in politics in the State at the time, however, were inconsistent upon this subject that this is by no means convincing disproof of his authorship.

The course of argument, as to the powers of the late Convention, which is pursued by the writer in question, required of him the discussion of a point which appears but faintly in his essay. He argues with some feeling that the *laws* of North Carolina were in force in the fall of 1865,—but the point is, were the regular *officers* of the State in existence? Was there a Governor, a General Assembly, and Judges of the Courts? Were there Sheriffs, etc., etc?

If he concedes that there were not, the whole of his argument falls. He has not more than insinuated that there were. This point required to be brought out into the light, and considered. It is the very key of the position. Was it a fact that there were no civil officers in North Carolina in the fall of 1865? Was it so *decided* by the supreme political authority in the land? Was it a *political* question, which the Courts cannot review? Is there no doubt that the Supreme Court of the United States will affirm that decision whenever collaterally involved in any question before them?

These questions have all to be answered to in the affirmative. We may or may not like the decision. If we had been in power possibly we would have decided otherwise. But we were not in power. No intelligent man can at all doubt that this is to be accepted as a point of Constitutional law in the American system, so long as it shall exist. The United States will enforce it in all dealings with these Southern States, and in all dealings with other States that may prove refractory hereafter. The South also has acquiesced in it throughout the limits of the late Confederacy. It has built the new foundations of its society upon it. It has engrafted it as a living and thrifty bud upon the cleft stock of its former institutions. All the law that shall hereafter be enacted, all the law that shall hereafter be decided, all that shall hereafter be executed, within these Southern States, will be enacted, decided, and enforced by persons who owe their positions to the consequences of this doctrine. For instance, I regard it not only as *fact* but as *law* that Governor Worth and not Governor Vance is the chief magistrate of North Carolina to-day.—To justify that opinion I submit that it would be so decided by any tribunal of the country, upon the point being raised before it by *demurrer*. Indeed I understand that our own Supreme Court, at its recent term, has enodrsed the doctrine that the civil offices of the State were vacant in the Fall, 1865, and that, not because of the ordinance of the Convention, but as a consequence of the war!

To assert then that the civil officers of the State (including the General Assembly) were not displaced by the result of the war is to assert that to be law, which will never be so considered, whether by prudent men conducting their private business, or by lawyers advising their clients, or by Judges administering justice. What sort of *law* is this? Gentlemen may hold it in private conversation, as English Jacobites used to drink "the King's" health over a glass of water, but for all effect it can have upon "life and manners," it is to be consigned

to the dust which covers the thesis that the United States cannot constitutionally acquire new territory, or that other that the President cannot of his own head remove officers where *appointments* depend on the advice of the Senate.

I will not ask whether it be *wise*, but whether it be sensible, or prudent, to denounce action subordinated to this theory? Is it kind to our people who are now suffering from calamities which come in great measure from ill-considered declamations of the same sort,—to arouse their passions against a matter which they can no more help now than they can help an eclipse of the sun? Are constitutional questions properly discussed by a denunciation of the action of citizens of North Carolina, when such action is a legitimate and *unavoidable* consequence of a principle acted upon, either in public or private affairs, by *everybody*? Did not the Supreme Court of the United States say, in *Luther vs. Borden*, that such questions as this are exclusively *political* questions, and so to be settled by the other departments of the Government? Therefore, has not this one been *settled*? Did not the Supreme Court of North Carolina say, in *Beard vs. Cameron*, that every Judge is, of necessity, bound to hold that he himself is rightfully in office, whenever the question is raised in his Court? Therefore, apart from the merits of the question, what hope is there of a contrary decision in any State Court of the South?

If, then, there were no officers in North Carolina in the Fall of 1865, how could certain provisions of the State Constitution, which take for granted the instrumentality of such officers, be carried out? Obviously, it was impossible. And, as obviously, no delay, no awaiting the return of a regular day of election for State officers, could have afforded any remedy. For these elections could be held only by the means of officers already existing,—courts, inspectors, and sheriffs,—and of these it was decided that there were none. Certainly a *casus omissus* had occurred.

I do by no means admit what the writer in question asserts as being *obvious*, viz: that the State Constitution excludes all methods of amending itself other than those expressly prescribed therein. Even if the Constitutional officers were all in existence, I think it clear that other methods of amending it might be resorted to than the Legislative method, and the method by a Convention *called by the General Assembly*. I say that I am altogether of their opinion who hold that, so far from the Constitution's expressly defining the only method by which it could be amended under all the contingencies of human history, it does not even affect to define those by which it might be amended in case it and all its instrumentalities remained in action. I will not quote the clauses referred to, but upon reading them, it will appear that the language of the second clause is, upon its face, stronger against an amendment of the Constitution by any other than what is known as the Legislative method than the first clause is against the calling of a

Convention by any other method than by a General Assembly. The second clause says that "*no part of this Constitution shall be altered, unless a bill,*" etc.; defining the Legislative method of amendment. The first clause says that "*no Convention of the people shall be called by the General Assembly, unless,*" etc. Before the Convention of 1865 the General Assembly could not amend the Constitution. That Convention by words strongly excluding other means created it an amending instrument. Yet it is not doubtful that a Convention, also, may still amend the Constitution, because one Convention cannot limit the powers of its successor. That is a principle of law higher even than the Constitution. To proceed: Before the Convention of 1835 the people, as well as the General Assembly, could call a Convention. That body, however, placed limitations upon the power of *the latter in this respect*—It did not mention the power of the former at all, yet it is asserted, as *obvious*, that this latter is restrained, as well as the former?

I persuaded myself that this has plausibility only because of the confusion of the two functions of the General Assembly which are entirely distinct. The General Assembly may, (1) call a Convention, and (2) may assent to the call of a Convention *by the people*. The first is a matter peculiar, perhaps, to American constitutional law; the necessity of the latter arises from a principle of universal public law, the existence of which here was recognized in the celebrated Rhode Island Controversy. That principle is, that it is revolutionary to alter any government unless with its own consent. That consent of course, in the absence of constitutional provision, may be given by a majority. It is said that there is a constitutional provision of that sort in North Carolina, and those who say so point to a provision which prohibits the General Assembly from calling a Convention; a provision which confines itself to an effect upon only one sort of a call for a Convention,—a provision which having been first introduced into the Convention of 1835 in a form to cover all cases and every species of action by the Assembly in reference thereto, was modified to its present wording after debate, and expressly to satisfy objections which applied with far more force to the power now set up for a small fraction of the General Assembly to *veto* a call by the people, than it did to the question thus actually made. To the improbabilities mentioned above, it seems enough to add that no allusion to "the principle of the Rhode Island case" occurs anywhere in those voluminous debates which surround the action of the Convention of 1835.¹

It may be taken as some evidence that the warmth of the writer in question is of little advantage to the discussion, to find him terming "obvious" a construction opposed to that asserted by some of the foremost men in North Carolina; by a very eminent ex-Governor in solemn

¹Not a strange fact considering that the convention of 1835 preceded the Dorr Rebellion by more than five years.

debate in the State Senate, and by an *ex-Chief Justice*, quite as eminent, at a period of our history the most momentous. What shall be termed "obvious" in Constitutional law, it is not so very easy to define, when in our own State, the joint committee upon "Federal Relations," in 1861, introduced a bill to call a Convention by the General Assembly, by a majority vote. It was said to have been done upon solemn advice, and was only altered after a month's consideration, when perhaps the *strength* of the bill before the Assembly had been better ascertained. But I do not care for the word *obvious*. I submit that it is not correct! The Constitution makes no provision as to calls *by the people*, and the principle in *Dorr's case* requires, in such calls, the sanction of only a majority of the Assembly.

Some may think my argument here incomplete, at least upon the point which has sometimes been made in this connection, viz: That, as the General Assembly cannot do by agent what they cannot do in person, therefore, that they cannot authorize the people to call a Convention except by a vote of two-thirds. The fallacy here consists in the use of the word *able*. When the General Assembly has appointed means for the people to express their will, the latter do not by using such means become the agents of the former. On the contrary, the case is, that upon an appeal by the agents of the people, the latter as *principals* step upon the stage for some end or other. As they are not agents of the General Assembly in using the means provided by the latter for voting for a Governor, members of another Assembly, etc., etc., so they are not, as regards a call of a Convention. That the one is common and the other uncommon action makes no difference.—Indeed, I suppose that the Assembly cannot delegate this power of theirs, although that of 1861, in some degree, professed to *authorize* Governor Ellis to call the Convention of May.

The Constitution, then, far from providing for all cases conceivable by gentlemen well read in history does not provide even for those which might occur during its own uninterrupted existence and operation. With regard to such cases as it did not provide for, it was as if it did not exist. Conventions called in other ways known to public law would not only be admissible but would be regular. The Constitution of 1776 made no provision for its own amendment, yet the Conventions of 1789 and of 1835 were regular. They had the sanction of the people and also of the existing government. The Constitution of 1835 made no provision for circumstances, such as surrounded us in 1865; therefore equally, a Convention having the sanction of the people and the government then existing, was a regular Convention.

Did the Convention of 1865 have the consent of the people? That question is in good degree yielded by the position taken by this writer as to the effect of a ratification. He says that not even a ratification could set up the proposed Constitution. Besides this, in 1865, the whole people, with the exception of a few hundred, were allowed to vote. Not

one in a hundred was excluded. Also, with a few exceptions, they were allowed to vote for anyone whom they pleased. Something more was desirable upon this score, it is true, but no one can recall the names of leading gentlemen in that Convention without being assured that no principle was observed as to the exclusion. I have heard of but one gentleman who was actually excluded. No one regrets that exclusion more than I do; no one is more sensible of the loss sustained by the State in his absence, but all that was done in this regard, however calculated to fret a constituency, or to impair the value of the Convention is as nothing when cited to show that the people were held in chains as to the composition of that Convention, or that the Convention did not represent public opinion at the time when it was chosen!

A question remains, as to the consent of the *government*. No expression of opinion could be had under those circumstances from North Carolina as an organized government. I am of opinion that the consent of the State under the circumstances would be taken for granted before any tribunal; on the general principle involved in the point that it is no trespass to drag a drowning man out of the water by the hair. He cannot speak by his tongue, it is true, but his situation appeals for assistance, as with a trumpet, to every passer-by. The State in mute agony *appealed* to her people for their sovereign assistance. Her condition was not only a license for their action, it was a piteous prayer for it. Notwithstanding all this, we are favored now with an action of trespass; and most elaborate commentaries upon the question of rude touchings of the person!

Again, of all the agencies that could have appeared, that of a Convention was the most effective, and the most in accord with the principles of the American system. The machinery set up by the people of North Carolina had become obstructed, its agents for operating that machinery had disappeared;—what was more proper than for the people, in this conjuncture, to appear upon the stage *in propria persona*? Yes! in proper person, for nothing can be more unfounded than the supposition, I might say the pretence—that the late Convention was the mere agent of “Mr. Johnson” and of his “satrap.” By the way, had not “Mr. Johnson” as well be called “President,” for a while longer,—and it is very kind to make the sort of allusions to him that is conveyed in the word “satrap” as applied to his officers? However, as this is a constitutional argument upon a *dry* question, such *dry* allusions may be all right. To resume, this Convention was the agent of no one but the people. President Johnson consented to its call, authorized it, but if this makes the Convention his agent, then all Conventions are agents of the person or body that call them; and as every Convention must be consented to go by the government then existing, then every Convention must be the agent of such government, and, to be particular, inasmuch also as by the title and the word of the act of May, 1861, Governor Ellis was “authorized” to call that Conven-

tion, therefore it was *his agent*; which furnishes us with a new argument against the validity of its ordinances, especially against that of secession.

Are these principles of public law? Can they be found in any respectable authority? Were they ever before in print? How, ever was a sovereign Convention called except with the assistance and authorization (in a certain sense) of a body or person not sovereign?—When, before, was it considered any detraction from the character of such a Convention as sovereign, that it was called into existence by such means? The simple truth is that “Mr. Johnson” gave his consent to the meeting of the people in North Carolina, and they availed themselves of that consent, and of the means which he had provided for them to compare views at the polls. His proclamation (the same for every Southern State) directed the Provisional Governor “to prescribe such rules and regulations as may be necessary and proper for convening a Convention composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the Constitution thereof” If it be desired to see how far this language conforms to that usually employed by those who call a Convention, let it be compared with the words of the act under which the Convention of 1835 sat, or with the act of the 1st of May, 1861. There is a difference in each as to the restrictions imposed upon the people, and as to their powers in Convention, but in each case some restriction or other is imposed. That such restrictions were imposed did, neither in the one case nor in the other, show that the Convention was inferior to the power that called it.

Again, it seems pertinent to remark that as the government of the United States was the only government in operation in North Carolina in September, 1865, its consent to the calling of a Convention, if not necessary, was very proper. That government consented, and the government of the State (say) could not be heard from, what more can be demanded for the regularity of the Convention that was called?

The Convention of 1865 was sovereign then, for it was composed of delegates chosen by the people, under qualifications not substantially in violation of their freedom. It was regular, for, supposing it be true that North Carolina could not consent, it was consented to by the only government then in existence within its borders.

The writer of whom I speak partly admits that the Convention could do, and bind the State for, all that “Mr. Johnson” *demand*ed. It will be seen from the extract above that if he *demand*ed anything it was “an alteration or amendment of the Constitution,” without specifying in what; meaning of course in anything that the Convention chose, consistent with the relations of the State to the United States.—But I do not argue the question upon such grounds. However, it might be said with some force that when the people concurred

in the President's proposition for a Convention they did so according to the *terms*, in which it was made, and therefore gave their delegates a general commission to "alter or amend" the Constitution. I submit that this is in analogy to precedents in such matters in North Carolina.

So far as regards the *powers* of the late Convention. This question must remain in North Carolina, whatever shall become of the proposed Constitution. The Convention completed some organic legislation, and, as will be admitted, it is not the amount but the quality of its action which brings its powers to the test. And this is so in other Southern States. Some of these went into general Constitutional amendment.—I have no means of saying how many, but I have before me the new Florida Constitution adopted, out and out, in October, 1865. It is to trifle with the people to suppose that a rejection of the Constitution proposed in North Carolina, will rid us of the question as to the powers of the late Convention. I think it hardly less a trifling with them, to put it forth as probable that any respectable tribunal, in the State or out of it, will entertain any doubt that its powers were sovereign and unlimited.

I shall say no more upon this point. I would have said nothing in regard to the new Constitution, but for this question as to the powers of this Convention, which has been urged in a manner well calculated to prejudice that instrument in question otherwise not unfavorable.—I desire the Constitution to be ratified; but I am conscious that the intelligent and conservative people of the State are so much soured and nettled by other matters as to render them very indifferent and perhaps a little averse to discussions of such matters. I did not intend to trouble them with my views. I was willing to leave its fate to that question which alone will much agitate the masses—the basis question.

That question has been well adjusted. "Taxation" in the Senate and "white population" in the Commons. "White population" is for all practical purposes the same as "white voters." The late Convention did not adopt the latter, because no question has ever been made upon it in the State, so far as I am informed. Where the white population is, there almost universally are the white voters, and an ascertainment of the numbers of the latter has always in North Carolina been trusted to the figures in the census table. As for counting negroes as white persons,—person for person,—and thus introducing them within the pale of political citizenship, everybody must see that it is a step towards the ballot-box. To be counted in apportioning representation is a *political* right, and the negro becomes a political figure of great weight when empowered to shift representation as he emigrates from County to County. It is a new principle in political law which gives one man twice or three times as many votes as another, because, not of superior intelligence or of superior virtue, but because he happens to live in a crowded negro neighborhood. Nor do I believe that the

best friends of the negro will come from those who are his nearest neighbors; nor, which is the same thing, that the wisest legislation for the State in this regard, will come from such quarters. There is not time to discuss this.

I take my leave of the whole matter with an expression of regret that the conservative men of the State are not in a temper fit for consideration of this proposition, on its own merits.—They refuse the books of the Sibyll, only to purchase what will remain of their contents, at some later day, for a higher price. Many events concurred to produce a conservative Constitution in 1866 which will scarcely happen again. We will not fall back upon the Constitution of 1835, as some persons flatter themselves. Even that paper, maimed as it obviously is by the oath which bound Gaston and his compeers to touch the old Constitution only in specified portions, were better than the excitement and sectional strife upon which we are to fall immediately. The present rule of apportionment, which at the next census counts the negro as a white person, will not be tolerated.—Other points also are in debate. Is the clause which now guarantees a trial by jury in all cases of petty offenses to poor persons of either color—guarantees *a yoke* to them; is the present method of appointing magistrates; and many other matters, to remain?

By no means! A new Convention, (authorized by instrumentalities which will owe their existence to the late Convention, and therefore, upon no better footing than it) will meet within ten years. Its fruits will be, the white basis in both Houses, or a negro-suffrage in both, the abolishment of all property qualifications for office, the election of Judges for a term of years by the people and many other inventions of that American Democracy which is surging and hissing, at a white heat, throughout this continent.

About most of this, I have no great care, but *conservative* gentlemen will wish that they had closed with the Sibyll's *first* offer in August, 1866.

ORANGE.

*Extract from the Standard*¹

Chief Justice Ruffin Against the New Constitution—He Denounces President Johnson as a Despot and Usurper.

We learn, and indeed the fact is admitted by the *Sentinel*, the organ of Gov. Worth, that the long and able argument recently published in the *Wilmington Journal* against the new Constitution and the powers of the late State Convention, and copied with so much gusto by the

¹Issue of August 1, 1866.

secession press of the State, is from the pen of Chief Justice Ruffin. We regret we have not space to lay this argument in full before our readers, but we give the following extracts, which will afford some idea of its intent and spirit. The Chief Justice says:

"I consider, that this is no Constitution, because your Convention was not a legitimate Convention, and had no power to make a Constitution for us, or to alter that which we had and have; and that it cannot be made a Constitution, even by popular sanction. If these positions be correct, it ought to be rejected by the people, as the easiest, simplest, and most efficient method of setting the points at rest, and avoiding many perplexing and dangerous questions before the Judiciary. I object to the organization of your Body as a Convention, because it was called without the consent of the people of North Carolina, by the President of the United States, or under his orders; an act of clear and despotic usurpation, which could not give the Body any authority to bind the State or its inhabitants. If it be said the President, or his satrap—his Governor of a Province—did not call, or rather constitute the Convention, but the delegates were elected by the people, and thereby the body was duly constituted, I deny it directly and positively. The delegates were not the choice of the people; for in the proclamation calling it the qualifications of the persons who might be eligible and those of the persons who might vote for them were strictly presented in a matter variant from our fundamental law, and excluding from each class a large portion—some would say the best portions—of our qualified citizens. In many cases our people were not represented, but, in fact, were misrepresented. The acts of such a body cannot be said to be those of the people of the State. They are not entitled to obedience, and cannot be, or at least, ought not to be judicially recognized. The whole proceeding arose out of arbitrary assumption, overthrowing all notions of popular government, and destructive of the very first principles of Republican freedom; and when it is put to the people for their sanction or rejection, then let every man who was excluded from voting for a delegate say: 'No! I had no voice in making it—in choosing the men who did make it, and I wish not now to be dragooned into its adoption'; and let every man whose neighbor or friend was thus excluded also say: 'No! the best men in the country were not allowed a voice in constituting the Convention or electing its members, and I will not sanction their ostracism by fixing on them a Constitution—an unalterable law—imposed upon them by a body in which they were not heard, and from which they were expressly excluded by irresponsible military power or its subordinate and servile instruments; and let every citizen of North Carolina, too, say: 'No: I scorn and reject an instrument tendered to me under the name of a Constitution of North Carolina which the people of North Carolina did not make, and which was made for them by men in the guise of our representatives, who were not our representatives, but those of a power

exercising at the time the authority of a conqueror in military possession of our territory, and arrogating to itself the right of superseding all our civil officers and abrogating our laws'.

"Mr. Johnson required a Convention to perform certain specific acts; to annul the ordinance of secession and tender a return to the Union, or claim its continued existence under the Constitution of the United States; to emancipate the slaves and ordain that slavery shall never hereafter exist in this State, and to repudiate the State 'war debt.' All these were done; the two first promptly, and in satisfactory terms; and the third, at the last moment, under subjection and in conformity to orders, after having once refused to adopt the measure. All was done, I say, that was required, and Mr. Johnson proclaimed that he had got all he wanted; that we were back as a State and might choose our representatives in Congress in conformity to our rights as a State, and to our law regulating elections. Was there anything more for *that* Convention to do? Were they chosen for any other purpose, even by those who were allowed to vote for members; How dare they, then, go on to frame a Constitution, a law, for all time, which is to be binding on those who elected them for the ends, and also on that large portion of the patriots and heroes—"unpardoned rebels"—who were not allowed to vote at all? The pretension is without parallel or precedent, until the present term of Radical assumption of power in a dominant military or numerical majority, without respect for rights or the Constitution. As far as they safely can, and whenever they can, the people ought to resist that pretension. This they can peacefully do, when called on and allowed to vote; and I trust they will do so on this occasion without commotion, in support of the great principle of human liberty—that a people have the right to make their own Constitution, and not be subject to one imposed on them, by force or fraud, by any extraneous power, or by a fraction of their fellow citizens."

Here it is assumed that the Convention was not "legitimate"—that it had no right to "alter" the Constitution of the State—that its assumption of such right cannot be made good by popular sanction—that the delegates to the Convention were not the choice of the people, because suffrage was restricted to so-called loyal voters, and because those "patriots and heroes" who were unpardoned were not allowed to vote—that the President,—in re-organizing the State, treated the State as a Province,—that the President, in "arrogating" to himself the right to "supersede our civil officers and abrogate our laws," was guilty of "an act of clear and despotic usurpation"—and that the people of the State, "as far as they safely can," ought to oppose this Constitution and "*resist*" this action of the President.

We do not hesitate to characterize these views, and these appeals to our people in this crisis, as seditious. They are calculated and intended to excite our people to resistance to lawful authority, "as far

as they safely can" resist it, and to involve the State in disorganization and anarchy, by upsetting the whole work of restoration commenced and carried on by the direction of the President.

Now, what are the facts? At the close of the rebellion the President found North Carolina without civil government. It was his duty, Congress not being in session, to take the necessary steps to establish civil government in the State. In doing this, he followed the path marked out by Mr. Lincoln in relation to Tennessee, with the exception that the means devised for re-establishing civil government in this and other States, were more systematic and regular, and provided that more of the people might take part in the work, than in the case of Tennessee. In his proclamation of May 20th, 1865, appointing a Provisional Governor for this State, he said:

"Whereas, the fourth section of the fourth article of the Constitution of the United States declares that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion and domestic violences; and,

Whereas, the President of the United State is by the Constitution made Commander in Chief of the Army and Navy, as well as Chief Executive Officer of the United States, and is bound by solemn oath faithfully to execute the office of President of the United States, and to take care that the laws be faithfully executed; and,

Whereas, the rebellion, which has been waged by a portion of the people of the United States against the properly constituted authorities of the government thereof in the most violent and revolting form, but whose organized and armed forces have now been almost entirely overcome, has in its revolutionary progress deprived the people of the State of North Carolina of all civil government; and,

Whereas, it becomes necessary and proper to carry out and enforce the obligations of the United States to the people of North Carolina in securing them in the enjoyment of a republican form of government:

Now, therefore, in obedience to the high and solemn duties imposed upon me by the Constitution of the United States, and for the purpose of enabling the loyal people of said State to organize a State government, whereby justice may be established, domestic tranquillity insured, and loyal citizens protected in all their rights of life, liberty and property, I, ANDREW JOHNSON, President of the United States and Commander in Chief of the Army and Navy of the United States, do hereby appoint WILLIAM W. HOLDEN, Provisional Governor of the State of North Carolina, whose duty it shall be, at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a Convention, composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the Constitution thereof, and with authority to exercise within the

limits of said State all the powers necessary and proper to enable such loyal people of the State of North Carolina to restore said State to its Constitutional relations to the Federal government, and to present such a Republican form of government as will entitle the State to the guarantee of the United States therefor, and its people to the protection by the United States against invasion, insurrection and domestic violence."

Here the President declares, not merely as Commander-in-Chief, but as "Chief Executive officer of the United States," that under the Constitution of the United States it is the duty to enforce the laws, and to "guarantee to every State in the Union, a republican form of government"—that the rebellion had "deprived the people of the State of all civil government"—that in order to restore this "republican form" of civil "government" and to render it practicable to execute the laws, recourse must be had to the fountain of all power, to wit, the loyal people of the State; and accordingly, he directed a Convention to be called, "for the purpose of *altering or amending*" the Constitution of the State, and for taking such other steps as might be necessary to place the State in the situation which she occupied previously to the rebellion. Well, the Convention was called. It was called by the people in their capacity as sovereigns, the President having simply *enabled* them to do this. It was unlimited in its powers, save by the Constitution of the United States, for it was called under and by virtue of that instrument. It was clothed with power to "alter or amend" the Constitution of the State in all respects, not inconsistent with the Constitution of the United States. Of course none but "loyal people" were allowed to vote for delegates; and these people in voting for delegates, gave to the call of the President the popular sanction, and thus made the Convention beyond all questions, *a Convention of the sovereign people of the State.*

The Convention assembled. It "altered" and "amended" the Constitution. It submitted two of its amendments to the people, and they approved them. This was the second popular sanction of the Convention. That body also provided for the election of a Governor and a Legislature, and of seven representatives in the Congress of the United States. The people voted for these officers, and they were elected. This was the third popular sanction of the Convention. The Legislature met, and elected or appointed various officers, judges, magistrates, and indeed all necessary officers, and put the whole machinery of civil government in motion. The Provisional Governor was relieved, and the Governor chosen by the people entered on his duties. The Convention, as it had a right to do, re-assembled pursuant to adjournment, and proceeded further to "alter" and "amend" the Constitution, so as to accommodate that instrument as far as possible to the new and altered condition of our people, and to open and smooth the way for the return of the State to the Union. The Constitution, thus

"altered" and "amended," will be submitted to the people for their approval or rejection on Thursday, Friday, and Saturday next. If they should approve it, it will be the fourth time the people of the State will have given their sanction to the Convention and its acts.

But if the Convention be, as assumed by Chief Justice Ruffin, not "legitimate"—if its acts are not binding—if it was called by a despot and usurper, as alleged by him, in violation of the Constitution of the State—and if everything done by it, or authorized to be done, is invalid, what is the logical result? The answer is, if this be so, then we have no Governor, no Legislature, no Judges, no Justices of the Peace, no Senators or Representatives to Congress, save those that were in existence at the close of the rebellion! The ordinance abolishing slavery is void; the ordinance repudiating the rebel debt is void; the ordinance repudiating the right of a State to secede is void; and the ordinance placing the freed colored people on the same footing with others in our Courts of justice is void. This, we say, is the logical result from Judge Ruffin's position. In *his* judgment the State has taken *no* step in the work of restoration. What, then, would he have? He repudiates the President's work as that of a despot and usurper; would he look to the majority in Congress for "legitimate" authority in this business? We presume not. *His* view is that the rebel State government is still in existence—that Vance is the rightful governor—that the Legislature which aided the rebellion is still the Legislature of the State—that Clingman and Bragg are our Senators, and that we are entitled thus to return to the Union with our primary allegiance due to our State, and bound only to "support," as we may understand or construe it, the Constitution of the United States! And this argument leading to such results, is easily caught up by the secession press of the State, and published as embodying the true doctrine; and the *Sentinel*, the organ of Gov. Worth, commends this argument of the Chief Justice to the attention of the readers, and says, after reading the argument, that the people "should carefully consider" whether their ratification of the new Constitution can give it force or validity.

We will state, by the way, that Judge Manly, who has just been appointed a delegate to the Philadelphia Convention, holds pretty much the same views with Judge Ruffin. If Judge Manly should be admitted to that Convention, the members of that body will associate with themselves a delegate from North Carolina who, at least, seriously doubts the validity of the acts of the Convention called by the President to take the necessary steps to restore the State to the Union. Indeed, Judge Ruffin, from his advanced age, his great learning, and his former prominence among the politicians who are now controlling the State, is regarded on all hands as their leader; and it is fair to presume that all the delegates appointed by these politicians, and who may go to Philadelphia, agree substantially with Judge Ruffin in his views. The only real friends of the President in this State, or of

the new Constitution, which is intended to complete his work of restoration, are those loyal Union men to whom he originally confided this work, and a few original secessionists who have seen and regret their error, and who have submitted in good faith to the national authority.

If the acts of the Convention are not binding, then slavery has not been abolished by the new Constitution. The basis of representation has not been changed, and three-fifths of the former slaves are counted as an element of power in the House of Commons against the free white men. This is just what Judge Ruffin and his friends desire. They forced thousands of free white men of this State to die in the hope of saving their slaves, and they beggared and ruined their families, and now, when the war is over and they have lost their negroes, they still want to count them in the basis of representation, and to have these negroes wield as much power in the Commons as five white men. Fellow citizens, if you want to defeat this scheme of the oligarchs, go to the polls and vote for the new Constitution, for that instrument provides for a white basis for the House of Commons. If the acts of the Convention are not binding, then the rebel debt has not been repudiated; and if the Worth and Ruffin faction can succeed in calling another Convention and in electing such a delegation as they want, they will fasten that debt on our people, and make them pay it. And this is no doubt one of the main secrets of Judge Ruffin's course in this matter. He holds a large amount of her rebel State bonds, and he wants a new deal of the cards with the hope of saving this debt. One of the reasons why he thinks the President a "despot" and "usurper" is, because he directed that this debt should not be paid, and declared it treason to attempt to pay it.

Judge Ruffin was regarded in 1860 as a Union man. But, being in the war, he staked everything on the result. He opposed all efforts to negotiate for peace on the basis of restoration of the Union, and insisted on fighting to the end. He might have saved much of his property and besides thousands of precious lives, if he had listened to the wise counsels of such citizens as B. F. Moore, Robert P. Dick, Edwin G. Reade, Alfred Dockery, Thomas Settle, George W. Logan, Tod R. Caldwell, D. F. Caldwell, John Pool, Lewis Thompson and others who might be named; but he staked all and lost, and that too as a rebel, for he freely admitted he was a rebel, and, as such, he respectfully and humbly petitioned the President for a pardon. The pardon was granted. The President believed he had repented of his sin, and so believing, he could not refuse to pardon this venerable man, who had so long and so ably and usefully served his fellow-citizens, in various positions, previously to the rebellion. He had lost heavily by the war. His family, with his approval and consent, as stated by the newspapers at the time, had given their trinkets and jewels, and what little gold they had saved, to the Confederate cause, so-called, a short time before Mr. Davis fled from Richmond; and he had lost, at one blow, all his

slaves, and the accumulations of a long and industrious life, in the new State bonds now in his possession, into which, very strangely for a person of his financial knowledge and sagacity, he had converted his old State coupon bonds. Thus suddenly cast down—thus impoverished and humbled by the result of the war, it was natural to suppose that he was sincerely penitent; and that instead of thwarting the President's plan of restoration, and denouncing one who had shown himself his best friend as a "despot" and "usurper," he would cordially and actively assist him, with his ripe experience and great learning, in his efforts to restore the State to the Union. But alas! alas! The result has been as far from this as possible. Well may the President exclaim, "if Judge Ruffin has done this, what good thing can I hope for from North Carolina, as long as that State is governed by Worth and his faction?"

*To Edward Conigland.*¹

HILLSBOROUGH—Aug. 6th, 1866.

I pray you, my good and dear Sir, to be no further uneasy about the guesses upon the authorship of "the letter." It is of no consequence whatever, now that it has happened, though before hand I was very averse to have my name mentioned in connection with political discussions, as I have never meddled in such matters and was sure I should be treated as I have been both by a profligate printer and some of his licentious partisan correspondents. But I believe, it will do no harm, as I shall take no notice of any of their animadversions; and I trust my friends will do me the favour of repressing their indignation and letting the shuttle-cock fall, as it will be sure to do, if they will not keep it flying. I hope I shall not offend you by appearing to feel a necessity for disavowing the belief of any infidelity or indiscretion on the part of yourself, your brother, or any other co-adjutor entrusted by you. But, in justice to myself, I assure you, that I do not harbour a suspicion touching any one of you. On the contrary, I am satisfied, that the imputation on me was altogether conjectural and formed solely on the line of thought through the piece and the directness and simplicity of the language of it. I heard that, as soon as it was received here, several of my friends laid it to me; and *Graham* directly charged it on me, with a compliment, "that he did not know any one else, who could write it," and therefore he held me responsible! I was a good deal surprised at that; for I wrote in much haste and without revision, and, as I intended the letter not as a finished and legal argument for myself, but as hints to you for the popular address I wished and endeavoured to invite you to make to the country around you, I expressed myself less as a Lawyer or a logician and more with the warmth and

¹This letter is in the possession of Mrs. Fanny Conigland Farinholt.

abandon of an oral address. Hence I did not fear detection from *style*, if I might be said to have one of my own. But so it is, we have been found out, and I am willing to let it go, with no blame on any one but myself. That is we have been detected as far as guessing goes; but no farther, for I am too well informed of the truth, that confession does no good, to be betrayed into that folly and still leave the publick, friends and foes, to all they can get out of guesses. It will be some comfort to you, however, to learn, that the reputed fraternity has done good—considerable, it is thought. For, as soon as it was suspected, it was alleged; and, as soon as alleged, it was believed; and many is the man, whose attention was called to the subject thereby and whose conviction followed, and many, many more there were, who became satisfied upon my name. The result has been, in this County, a majority against “Ratification” of nearly 100 and much larger majorities in adjacent counties, where I was well known. The success in this county was particularly gratifying, as “the letter” was all we had on one side, and on the other Mr. Phillips and Mr. Josiah Turner Jr., besides others, attended the tax-gatherings and, unopposed, harangued the crowd. I am inclined therefore, to think, it was good fortune to a good cause, that Messrs. Pell and Gales took upon themselves to publish the “rumor” as I think my *name has done* some good! What I regret most about the matter is, that the production was not more worthy of weight, as it might have been made and as it should have been made, if I had supposed it was ever to be given to the world in print. I should like to have the opportunity of trying my hand upon it again, as I am entirely sincere in my position and know full well, that I could sustain them with many additional arguments and forcible illustrations. But I never shall attempt it, as I have neither strength nor inclination for the task. I have not read any one of the criticisms on me, being minded to keep peace and quiet within me. But I have heard enough of them to know, you would not wish me to *answer them*. I could not possibly condescend to reply to the ribaldry and illogical vulgarity of the base wretch *Holden*; nor can I be drawn into controversy with Mr. Phillips, with whom I have a very slight personal acquaintance, but of whom I have observed and heard enough to be satisfied that, though a man of talents and education, he retains the coarseness of his origin, which in union with his literary acquirements and his talents and his ambition, has made him a *Diamond Demagogue*, of the first water. Besides, by his own admission, he was *false to the cause* of the State, under which he took service; and I could not treat him in argument with respect, and without that, I had better not argue with him at all. His article has been related to me; and as I have heard it, there would be no difficulty in tearing it to tatters and exposing him. But you must allow [me] to stop at what I am and take “mine ease” both in temper and thought. But I shall be ever pleased to hear from you and interchange thoughts and good feelings.

I observe, there are changes spoken of in the representation of Halifax in the next Legislature. It will be a most important one and our ablest and purest men ought to be sent to it. Now, pray, can't you go? The duty will be arduous and in many respects disagreeable; and, especially, my conscience pricks me at the thought of drawing you off from your business and clients and, above all, the care of your dear little ones, and I cannot persuade you to embark in political life. But, although, as your friend, I cannot urge you in opposition to so many and such cogent private motives, yet I am deeply convinced of the great service you could render your country, and therefore, for this once, I venture to ask you to think of it, and, if at all compatible with your personal relations and duties, to undertake it in the present position and turn of affairs. It may not prove as detrimental to your gains as might be apprehended, as it can hardly be questioned, that your reputation would enlarge with the occasion and opportunity and that the accessions of character and distinctions would greatly compensate for the losses of the pocket and the vexations of the service. Again, I say, think of it, and, although I cannot vote for you, I shall feel a deep concern in your determination and hope you will communicate it to me. Indeed I wish to hear often from you and can give you my word, that you will always find sympathy here.

I cannot venture on any *work*, yet it will ever be a pleasure with me to correspond with you, and to be thought by you, as I really am, My Dear Sir, Your friend very sincerely and obliged St.

THOMAS RUFFIN.

Be so good as to present me in favourable terms to your Brother, and say, I desire his further acquaintance. I hardly count on ever being at Halifax, as a few weeks will bring me to my Eightieth (80th) year; but I shall be extremely glad to see him or you at my house at any time.

I rather suppose, "Ratification" has carried the day—tho' not yet certain, and less so than it has been. But let no provocation carry you out of yourself far enough to embrace "Negro-suffrage." We must never come to that; for, it would leave white suffrage of no value.

Edward Conigland Esqr.

Halifax.

From Henry E. Colton.

HILLSBORO Aug. 20, [1866]

Hon Thomas Ruffin:

Sir: It is my desire to obtain some historical traditionary and documentary information concerning Hillsboro', prior to and during the revolutionary war. While on a visit to Gov. Swain on last Saturday he advised me to consult you thinking that you might probably

have some valuable information which you would impart to me. If you can give me information more readily by personal visitation than by letter will you please state at what time a visit from me would be most acceptable.

The object for which I am collecting information is to enable me to write for the Messrs. Harper a history of Hillsborough, as a town of the Revolution, which I have promised them..

With very much respect I am honored sir, yours truly

HENRY E. COLTON.

From J. L. Morehead.¹

ROCKBRIDGE ALUM SPRINGS VA.

Wednesday Aug. 22nd, 1866.

Judge Ruffin

My Dear Sir.

Both your esteemed and affectionate letters have been rec'd. The latter last night. I should have written you before this but that Father requires my constant and unremitting attention and I had nothing favorable to write. His symptoms have not improved at all. He is growing weaker daily and is much exhausted—he is weak as an infant and can't turn himself in bed.

The Drs. have feared all the time that the disease was organic and every day without relief more and more confirms their fears in that regard. We hoped on Thursday Friday and Sat. last that he was better and the symptoms were favorable but they have now all disappeared and yesterday he had a severe chill, which of course is against him. We have nearly lost all hope of his recovery and the Drs. can give us no encouragement. Sister Lizzie and Turner Morehead are here.

I appreciate, my Dear Judge, the kindly sentiments expressed in your letters as much as a man can and when I know that they are all fully reciprocated by my poor and nearly exhausted Father it makes me turn with affection to you as one who has Father's most sincere affection and admiration. Hundreds of times in my youth and in my riper years has Father talked to me of you in terms of most unbounded admiration, confidence and love.

When I think of the old homestead, where, in all likelihood, his accustomed chair will ever hereafter be vacant and his cheerful spirit and voice will not be there, with words of wisdom and advice, upon which I have entirely relied and always followed, to cheer me and direct me, my Dear Judge, I am completely overwhelmed with grief. I am

¹John Lindsay Morehead, a graduate of the University, who had been colonel of a North Carolina regiment in the war.

heartsick. I feel that it is a blow, which even I, as strong as I am, will hardly be able to bear. Then what will it be to my poor invalid Mother? The ways of Providence are mysterious and past finding out and if it be the will of God to take him from us, then I pray that he will temper the stroke with that divine love which will enable us to bear it patiently, submissively. I have rec'd a great many letters of sympathy and enquiry concerning him. The only letters he has asked to have read to him are *my Mothers and yours*. While there is life there is hope, and may the God of all mercy spare him to us is the sincere and constant prayer of your

Young and distressed friend

J. L. MOREHEAD.

From Edward Conigland.

HALIFAX N. C. Augt. 27, 1866.

I was much gratified by your last letter. A little reflection soon satisfied me of the wisdom of your course in not replying to the communications directed against your famous epistle. To have noticed them would but have given them importance, and the absence of all reply is fitting rebuke to the uncourteous tone which pervaded some of them, and the best evidence you could have given of their real weakness and insignificance. Hanes, of the old North State, was however gentlemanly and not without considerable ability.

I will always congratulate myself on my success in persuading you to publish, for I feel well satisfied that, to your letter and to the announcement of the authorship, in connection therewith, the defeat of the "Constitution" is due, and if you should never again appear in print, it will be a fitting close to your long, laborious, most useful and honorable life. I trust, however, that we will yet have many more essays from your pen—one so alive to public duty as you are, cannot reconcile it to himself to remain inactive when the Republic demands, or requires his services.

You may have heard of a communication, addressed to yourself, under the signature of "A member of the Convention" which appeared in the Standard. It was, it seems, from Moore, if so it was entirely unworthy of him, and as weak as anything I ever saw from his pen. Mr. Moore will again appear in print, on the same subject, and I really desire to reply to him. He is responsible for the most objectionable action of the Convention, and for its adjournment over to the second session, and for most of its work during that session. I do not think that he ought to be allowed to walk over the course. I would under these circumstances like to get just a few hints or suggestions

from you, which I could work up in my own style in the course of my reply. There is one point made by all the supporters of the Convention, on which they seem to lay great stress—*Namely*, that if the Convention was illegitimate, we have now no legally organized government, that the election of Gov. Worth, of the last legislature, and the acts of both, are, in such case, null and void. What is the proper reply to this? What do you think of the citation from English history in support of the president's call of the Convention? I refer to the Convention Parliament particularly under William and Mary? I would be glad, at your leisure, to have a few views on these points, especially the first.

I had entirely made up my mind not to canvass the County for the legislature, but your letter so far influenced me, that I was on the very point of declaring myself a candidate on the first day of our court, Monday last, to the large number of people then assembled in Halifax, but it occurred to me, that I would again sleep over it, and the result was that I felt compelled to adhere to my first resolution.

I have no doubt, nor have my friends any, that I could be elected over any man in the County, but I would be compelled to enter a five weeks' canvass, with some wretched demagogues, whose weapons are repudiation and *whiskey*, at a time when the few courts that I attend are just commencing. If elected I would be compelled to be absent from the County when the press of business for the Spring term of the Superior Court, arising out of the new order of events, will be at its height, and when the matter of Mr. Johnston's will, in which, I think, Gov. Graham is engaged, will be tried at a special term. I cannot abandon that case, and I could not reconcile it to my views of duty to absent myself from the legislature during the two weeks it will probably take to try it.

My dear departed wife and myself, gave the labor of our joint lives it may be said, to the support of a number of negro women and children, thinking that we were laying up a provision for our own offspring, The result of the war deprived us of these and, consequently of nearly all the fruits of our labor. I have my dwelling with sixty five acres of land around it, and about an hundred in the country with furniture etc. and am out of debt. This is all. My dear children, all young, save one, who will complete her school life in a year from this term, and depending entirely on my health and business for education and maintenance, and I feel it absolutely incumbent on me to give up all thoughts of public life, when I cannot appear therein without a material lessening of income. I am deeply sensible of the important questions that will come before the next legislature, and I feel, as much as any man can, the duty resting on us all of sacrificing something in behalf of the Commonwealth, and if I alone were interested I would not hesitate a moment, but under the circumstances I think I am excusable in declining to be a candidate. I trust that the reasons which have

influenced me will be satisfactory to you, for if anything in this world could persuade me to offer for the legislature, it would be the suggestion of your letter.

I will always feel highly flattered and honored by the reception of an occasional letter from you, whenever your leisure and convenience may induce you to write.

*Extract from the Standard.*¹

LETTER FROM HON. B. F. MOORE, OF RALEIGH.

Reply to the "Distinguished Jurist," Supposed to be Ex-Chief Justice Ruffin.

Triumphal Vindication of the Validity of the late State Convention.

To the People of Wake County, and, through Them, to the People of North Carolina.

A question of unspeakable importance to the people of North Carolina, as, indeed, it must be to all the Southern States, has been recently raised by an eminent jurist of the State: namely, whether the Convention, which was called by President Johnson, through the Provisional Governor of the State, had any validity at all, and, if it had, what was the extent of its powers.

By this jurist it is warmly maintained "that the Convention was not *constitutional*; it had no powers; was an unauthorized body; no more than a voluntary collection of so many men; a caucus," etc.

If this be true, the blunder of convening the late Convention, as a body possessed of authority, is truly serious, and will likely prove to be immensely calamitous.

The powers of the Convention are the foundations, upon which will rest the question, whether the *present* Governor is a constitutional officer; as, also, whether the late legislative body was competent to pass laws, and, in like manner, whether any of the acts performed by the appointees and agents of any person or body deriving power (how even remotely) through this "caucus," are entitled to any validity.

Nay, the attack upon the legal status of the Convention necessarily strikes the Provisional Governor, and, if successful dethrones him with all the host of officers deriving their powers since the surrender of the Confederate cause. For the same eminent jurist says, that if there had been no provision in the Constitution directing in what manner Conventions might be called, still "the Convention was not a legitimate Convention—the Convention was called, without the consent of the

¹Issue of Wednesday, September 12, 1866.

people of North Carolina, by the President of the United States, and under his orders; an act of clear and despotic usurpation, which could not give the body any authority to bind the State or its inhabitants. If it be said, that the President or his satrap, his Governor of a province, did not call, or rather constitute the Convention, but the delegates were elected by the people, and thereby the body was duly constituted, I deny it directly and positively. The delegates were not the choice of the people, for, in the proclamation for calling it, the qualifications of the persons who might be eligible, and those of the persons who might vote for them, were strictly prescribed in a manner variant from our fundamental law, and excluding from each class a large portion—some would say the best portion—of our qualified citizens. In many cases our people were not represented, but were, in fact, misrepresented. The act of such a body cannot be said to be those of the people of the State. They are not entitled to obedience, and cannot, or at least ought not to be, judicially recognized."

Thus it appears to be the decided opinion of this jurist that the body, had it been called by a Legislature, was not legitimate, because a portion of the voters, qualified under the Constitution of the State, were not allowed to vote for members of the Convention. Now, although, when the late Legislature was called into existence by the Convention, some of the disqualifications were removed, yet others of these were retained, and several persons, perhaps one in a hundred, but not more, were not allowed to vote. Whether those, thus disqualified to vote for the Convention, or for the General Assembly, were the best portion or the worst portion of qualified voters, can have no weight in considering the question, and was likely introduced as a fact, to multiply the *alia anormia*.

But, the argument, which renders void a Convention because certain persons are not allowed to vote, will for the same reason equally render void the General Assembly; and, in like manner, any election for Governor, if the persons thus excluded have the same constitutional right to vote in each election. Now, it has happened since the Convention sat, that Judges, appointed by the Convention and the General Assembly, have sentenced men to be hung, some of whom have been executed, and others have been pardoned by the Governor. Many have been tried for minor offences and been imprisoned and severely punished, yet, of all the Judges appointed by such authority, no one of them has questioned his right to a seat, or his proper power to administer the law. No lawyer has raised the point for his client. The Sheriffs, deriving their authority through elections directed by the Convention, have been gathering taxes from the citizens, and no Hampden has yet been found to set the patriotic example of peaceful resistance, even. The Justices of the Peace, too, equally illegal officers have been imposing heavy burthens on an impoverished people, without a word of dissent as to their authority. They have, moreover, been engaged constantly

in uniting respectable persons in the holy bonds of wedlock, without a voice of warning being raised by any querist in this State. In like manner the authorities of all the other States, based on Conventions called by the President through Provisional Governors, have proceeded to organize their governments anew, and the Conventions, with precisely the same powers as ours, have altered their constitutions in many important particulars, not necessarily connected with the changes demanded by the overthrow of the Confederacy.

If there be any acknowledged force in the positions laid down by the writer, is it not a matter of profound surprise that no where else have they been raised before the people, or, if raised, that they have had no weight in the public consideration?

But, fellow citizens, I have not been prompted to defend the Convention from the charge of being either a mere caucus of irresponsible men, or (if not altogether such a body) of having transcended its legitimate powers and usurped others never committed to it, by displaying to you the dreadful consequences which must follow the establishment of the charge. Having been a member of it, I gave due consideration to the question whether the Convention was a legitimate body, or not, and, if it were, what powers it possessed? It is true, that I preferred, that in raising our State government from its utter prostration caused by the late war, we should pursue, as nearly as practicable, the forms to which we had been accustomed, and was, therefore, in favor of allowing the Legislature to assemble even under the military banner and provide for calling a Convention in the mode prescribed. I so urged upon Gen. Sherman, in our first interview after his arrival at the seat of government, and I found him altogether disposed to the same course. I asked him if he would furnish transportation on his lines of railroad for the members who might desire to attend, and he replied that he would. When about one month afterwards, I visited the President, in company with other gentlemen from the State, to see what line of policy was to be pursued to enable the State to resume its political and civil condition, I urged on him the propriety of allowing the members of the Legislature to convene, because this was the mode prescribed, by our Constitution, for calling a Convention. He unhesitatingly disapproved of it, saying there was no Legislature; that it was elected, qualified and organized as a body in rebellion against the United States, and was not a legal body. I urged him to waive this and allow them to convene for the mere purpose of calling a Convention, and, among other objections, he said: Suppose I should allow it and thus recognize the legal existence of the rebel State Government, and the Legislature should refuse to conform to such terms as may be deemed essential to suppress the rebellion and restore the State to its duty?" I replied that he need not fear it, that "there was, at this time, no one of that body who might not be led back into the Union with a silken thread." The President was,

however, fixed in his purpose of ignoring the existence of any civil authority in the State, and he even maintained that there had been no lawful authority of any kind since the rebellion had become open and flagrant. I did not concur with him in all he said; but I mention this to show how great, in his opinion, was the necessity for a thorough fundamental organization of the Government, and how ample and unrestrained should be the powers of the Convention. In his proclamation, issued a few days afterwards, he reaffirms the views above expressed, and says that the rebellion, "*has in its revolutionary progress deprived the people of the State of North Carolina of all civil government,*" that "*it becomes necessary and proper to carry out and enforce the obligation of the United States to the people of North Carolina in securing them in the enjoyment of a republican form of government.*"

Therefore, as "President of the United States and Commander-in-Chief of the army and navy of the United States," he appointed "William W. Holden provisional Governor of the State of North Carolina, whose duty it shall be, at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a Convention, composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering and amending the Constitution thereof, and with authority to exercise within the limits of said State all the power necessary and proper to enable such loyal people of the State of North Carolina to restore said State to its constitutional relations to the Federal government as will entitle the State to the guarantee of the United States therefore, and its people to protection by the United States against invasion, insurrection and domestic violence: Provided, That, in any election that may be hereafter held for choosing delegates to any State Convention, as aforesaid, no person shall be qualified as an elector, or shall be eligible as a member of such Convention, unless he shall have previously taken and subscribed to the oath of amnesty as set forth in the President's proclamation of May 29th 1865, and is a voter qualified as prescribed by the Constitution and laws of the State of North Carolina in force immediately before the 20th. day of May, 1861, the date of the so-called ordinance of secession; and said Convention when convened, or the Legislature that may be thereafter assembled, will prescribe the qualifications of electors and eligibility of persons to hold office under the Constitution and laws of the State—a power the people of the several States composing the Federal Union have rightfully exercised from the origin of the government to the present time."

In pursuance of the powers granted a Convention was called, and the qualifications of those allowed to vote were suggested by the provisional Governor, and submitted to and approved by the President. All were allowed to vote, who were loyal and would then take the oath required by the President, except such as might fall within some one of the ex-

ceptions: It was required of them, that they should be pardoned before voting. The number of votes cast is not known, but in the county of Wake the vote exceeded 2,000. Very few could have been excluded by the rules prescribed, for the whole number of petitioners for pardons from the State is under 2,000, and at least one half had been pardoned before the day of voting.

I do not notice this, because I conceive it necessary to my argument, but it is well enough that the truth of history should be vindicated.

The Convention was the President's work, and not Gov. Holden's. And it may be safely affirmed, that if it were legally called, the Convention was vested with the amplest powers to alter and amend the whole State Constitution in every part. There is not in either proclamation, that of the President, or of the Provisional Governor, one word of dictation or special direction of duty. So far as the proclamations, speak the Convention was as free to alter or amend, and to form and present a Constitution of its own choice, as the Convention of any other State in the Union, North or South. Indeed, so far from carrying the aspect of dictation, it is expressly provided, that the amendments shall be submitted to the people.

Every State is bound to present such "a republican form of State Government as will entitle the State to the guarantee of the United States therefor, and its people to protection by the United States against invasion, insurrection, and domestic violence." This was all that was required of the Convention; but what should constitute *particulars* of this republican form, was left to the Convention, with liberty to alter and amend the existing one, as in their judgment might seem best. If the Convention had been called by the General Assembly, under the same terms of power, and it had presented the Constitution lately rejected, there would have been never a word of objection urged against it, for having usurped powers; nor urged against the legislation exercised by it,—certainly not by those, *who were of the Convention of May, 1861*. For, although it was well understood, that the only and exclusive objects of calling that Convention were those which concerned our federal relations, yet they legislated on every species of law-making, fundamental and temporary, from the solemn act of cutting asunder, for all time to come, the bonds of our Federal Union, to the repeal of an act of the Legislature which but a few months before, had restored the competency of Indian testimony. Nor was it less observant of restraint in matters of constitutional amendment, which had never been discussed, nor even thought of, in the canvass which preceded its assembling. Indeed there was no canvass. Thirteen days only were allowed from the call of the Convention to the election of its members. Yet so soon as it had convened and resolved to secede and provide means to uphold the impending war, it set itself to work on constitutional reform. To enfranchise the Jews, to change the rule for demanding the yeas and nays; To protect the owners of

slaves from excessive taxation; Provisions for these purposes were engrafted in the Constitution, and others equally unconnected with the political change, were on their way to it. They, with a book of ordinary legislation, were the works of able jurists;—of men, who now complain, that the late Convention undertook to amend the Constitution in matters about which they had received no instruction, and became legislators, when they were elected only to amend the Constitution.

Having shown that the Convention has exercised no power, which was forbidden to it—either by the words of the Proclamation or the example of the Convention of 1861, which, I cheerfully admit, had in it some of the “best portion” of the people,—it remains now only to establish the right of the President to call it.

Practically, the doctrines taught by the jurist, to whom I have referred, have deprived the State of all its officers, except those who were appointed “during good behavior”; and the last official oath, which was administered to these officers by a *proper* person, was “to support the Constitution of the *Confederate States*.” These doctrines, too, leave the State in a helpless condition for the future. The first Thursday of August, 1866—the time for electing members of the General Assembly—has passed away; and the time fixed by the only law, which this jurist acknowledges, will be on the first Thursday of August 1868. So there can be no lawful Legislature till after that day. There can be no Governor either, for the same reason, unless it be Gov. Vance, and he stands displaced by the military arm, and is under parole. The election for a Governor and General Assembly, in October next, will be a wretched farce, and the electors assembled on that day a mere “caucus.” Of the same character likewise will be the persons elected members when they shall assemble for legislation. The Governor also will be a mere usurper of the Executive chair.

Equally unfounded is the opinion that the Convention was called for specified purposes. It has been asserted by some, that it was called for three purposes only, viz: 1, to rescind the ordinance of secession. 2, to abolish slavery. 3, to repudiate the war debt.

I have said that neither of the proclamations dictated any specific work for the Convention. The oath, however, required of the electors and members may, perhaps, be considered to some extent, as instructions, that they were to support the Constitution of the United States, and abolish slavery. As to the war debt, there was no reference to it in any writing or opinion of the President until many days after the Convention was assembled. His injunction upon this subject then came by telegram, in response to an inquiry by the Provisional Governor. Up to that hour his wishes upon the matter were wholly unknown.

But had the Convention stopped, after doing these three things, there could have been no Governor, other than a Provisional one; and no legislature whatever, as the President did not recognize the existence

of that elected in August, 1864. No power to raise means to support the insane and helpless, or to revive a judiciary. It is useless, however, to pursue further this aspect of our then forlorn condition.

The fundamental error of the learned jurist, whom I have quoted, when he denounced the call of a Convention by the President "an act of clear and despotic usurpation," consists in his wholly ignoring the admitted laws of war. Had there been no conflict of arms, between the United States and North-Carolina, the act would properly be denounced in the strong language used, and the President's Convention had indeed been a mere "*caucus*." But far otherwise has been the state of things.

North-Carolina, all admit, previous to May 20th, 1861, was an integral part of the United States. On that day the State threw off its allegiance and armed itself to maintain its independence. In the Convention, which undertook to inaugurate this new political status for the State, there were two parties; one who held the right to abandon the Union at pleasure, the other who denied this right. The former were determined on their course of maintaining the cause of separation; the latter, seeing the fury of the hour, feared the introduction of a deadly civil war around our fireside, if they should stand up in defense of the national authority, and persuaded themselves that the State would suffer less by uniting in a common attempt at separation, and, therefore, they consented to rebel against that authority. Both parties united as separatist. Many of the latter party still clung to the hope, that some fortunate event would turn up which might reunite the dismembered parts.

The United States, acting upon the twofold principle, proclaimed from the foundation of the government, that the Union was indissoluble at the pleasure of a minority of the States, and that the integrity of the Union was essential to the safety of each and every State, levied armies to restore the national authority and enforce obedience to its laws.

From the 20th day of May to the final surrender, the State of North Carolina, in all its departments, political and civil, was in organized resistance to the United States. During all this time its Governor and its Legislature were employed in bringing to the aid of the war its entire resources of men and money, and the judiciary concurred in the legality of its course. Nothing was left undone, which could be done, to disrupt the common government and annihilate its authority. During a period of four years these gigantic energies were displayed. At length, however, the State was filled with the mighty and victorious armies of the Union. Resistance was no longer practicable; and the arm of State opposition unwillingly fell, nerveless and paralyzed. The President was the commander-in-chief of the victorious forces. It had been his duty to carry on the war and he had achieved the victory at an expense of three hundred thousand lives, and three billions of money.

By all the laws of war it was his duty to secure the results of the conflict. To this end, for a while, martial law was spread over the whole State and the people were without any civil government. Was it not constitutional, in such a condition of things, to enforce that law? Was it a duty on the part of the high officer, entrusted with the power to terminate the war and re-establish the allegiance of the people, was it his duty, I ask, to restore to power the Governor and the Legislature, who had been pressing and using every available means within their reach, to oppose the very thing which he had just accomplished? Was it his duty to rely on any promises of future loyalty which they might make, while his victorious banners were displayed before them? The most favorable position which the State, in this condition could occupy, is that of a foreign nation, which being conquered, it is not the will of the conqueror that it shall resume its independence [without] guarantees of peace. He has the rightful power to provide the means of securing its dependence; and he is the sole judge of the necessary means. So the President, being charged with the duty of suppressing the rebellion, insurrection and domestic violence, was the sole judge, after these were quieted in the presence of a mighty army, of the best civil means for securing that tranquillity. If he had deemed it prudent to keep up the martial law, he could have done it without question, as far as the mere right of power was concerned, because necessarily he was the sole judge of the expediency. May he not use the milder means for the same end, by installing, for a time, a civil authority of his own selection? It would be extraordinary, indeed, if the President were invested with the power to use mighty armies and fight bloody battles to suppress the rebellion of a State, and yet not use milder means to secure the object in view. When martial law exists civil law is superseded. The conqueror may allow just so much of the civil as he may please. He may extend it over the whole of the conquered land or may confine it within bounds. If he puts the entire people under it, it is presumed that the security of the objects of the war renders it necessary. If he limits the area of its operation, it is presumed to be done because the security of those objects will not be endangered thereby. He may extend martial law over the people in certain particulars and allow the civil law to operate in all matters else. In a word, he may use such means, either of war or peace, and it is his duty to do so, which will best attain, and most effectually secure, the purpose in view. If the continuance in power of those who have fought him is in his judgment dangerous, he may displace them. If the installation of others in their place would avoid danger, he may install them.

It is true, that when he proposes to secure the ends of the war by re-establishing civil authority, it will ever be wise in him to adhere as closely, as with safety he may, to the usages of the people. But it is a matter of discretion with him to allow or refuse them. If he propose the terms on which, alone, the functions of the civil law may

be resumed, and they are refused, he may still continue the martial law until they are accepted; and if these terms be accepted, they must be embraced in good faith and punctually fulfilled. If, after accepting them, they are rejected or carelessly complied with, he may restore the martial law in its full vigor.

When the President said he was unwilling to trust a Governor and Legislature, who had urged a bloody war for four years, to inaugurate a new civil administration of affairs, he announced what he had the right to say. When he proposed to allow loyal citizens only to inaugurate civil government he did not exceed the lawful power of a commander-in-chief, who had won his power on the battle field. If, to this hour, the people of the State of North Carolina had refused to call a Convention, at the suggestion of the President, he would clearly have been authorized to suppress all civil government and continue in full force the martial law. Can this be questioned? If the gubernatorial and legislative terms both had expired by their own limitation, while the martial law was in full vigor under the commander-in-chief, might he not have called a Convention of the people; or provided rules for the election of a Governor and Legislature? If the supreme power, in a State, which is suddenly bereft of its established organs, can substitute others for re-inaugurating civil government, cannot the Commander-in-chief, who is, himself, the supreme power,—may he not, for the purpose of civil government, appoint a Governor, with the power to renew and start afresh the dislocated machinery of civil government? If he cannot, it is certain, that, so long as he may choose to maintain martial law, no other authority can. It is equally certain that he is not bound to withdraw that law in order to witness proceedings had for that purpose, under other counsel than his own.

That such are the unquestioned laws of war is admitted by every writer on the laws of nations. I need not cite authorities to sustain my views. The whole of them is grouped in two sentences by the learned Kent, vol. 1 p 96, who says: "The end of war is to procure by force the justice, the justice which cannot otherwise be attained, and the laws of nations allow the means requisite to the end. The persons and property of the enemy may be attacked and captured, or destroyed, when necessary to procure reparation or security."

If these laws of war do not apply to the States, it must be because of the peculiar fabric of the Federal government. Although, from its foundations it has been maintained by many able statesmen, that each State had the right to withdraw from the Union at pleasure, yet it is very certain that the government has never, for one moment, been administered upon that theory of its construction; but upon the theory that the Federal government was supreme in its powers granted to it; and if any question might arise whether a power claimed had been

granted, its ultimate decision was to be settled by federal authority. Whenever, therefore, before the late conflict, any portion of the people rose in arms against the authority of the government, they have been treated as rebels; and, in like manner, whenever the people of a State, in their State organization, have attempted to throw off their allegiance to the government, the State organization has been disregarded, and its people have been treated precisely as a mere portion of the people of the United States, without reference to their State organization. It has asserted and exercised the right to suppress all combinations, great and small, against its authority. It claims the same power to crush a rebellion in a State, as one in a territory. And if, in truth, it may ignore and disregard a State organization, when the State shall attempt to shelter the people in their rebellion, it may use the same powers over them to suppress the force and secure loyalty, as if they had no such shelter. The end of the war is to compel obedience, and the government must have the same powers to effect this over the whole people of a State, as over one hundred of its citizens.

In every civil war, no matter what may be the form of its government, when the rebellion shall be suppressed, it becomes the government, after fully securing its peace and tranquillity, to restore the people who may be pardoned, as speedily as possible to all their former rights, unless it shall be deemed necessary, for future security, to abridge some of them. A consolidated and unlimited government may do this; but as there is no power in our form of government to annihilate a State, there is no authority, known to the Constitution, to alter or diminish any right which stands guaranteed to a State. The only power, which may incidentally do this, is that which enforces on a government the solemn constitutional duty to preserve the States as an integral part of the Union. If in doing this, collisions arise, and the laws of peace are too feeble to effect the object, the laws of war must be invoked to accomplish it. In a word the rebellion must be suppressed by arms, obedience compelled, and tranquillity restored, by such means as shall be most effectual to preserve the integrity of the government.

Political and moral storms no more subside at once, into a calm than do those of nature. The surging passions which have been raised during a civil war of four years will become tranquil at no man's bidding, and those whose task it is to suppress a civil war heated by three hundred fields of blood and carnage, and the fate of whose arms have been to spread desolation in the track of conquest, may never expect, at the first moment when the roar of battle shall cease, to find the subdued heart or the cordial hand for peace and fraternity. The conqueror who knows this must regulate his policy by the condition of the people. If he have the kindest of natures himself, and

be ever so much disposed to proclaim pardon to all, still he must watch the wave of discontent, to see whether it is really sinking into rest, or restrained only by the check of triumphant arms. It is doubtless his true policy to remove, as fast as possible, from before the eyes of the people, all offensive displays of the conquering hand, and substitute, in their stead, the confidence of returning friendship. Distrust begets distrust, and so long as it shall manifest itself, the door to a cordial fraternity will remain closed. And while I admit that martial law may be absolutely necessary to suppress a rebellion, and, as a matter of course, that those, who may be entrusted to suppress it, must be at all times, unless there be a universal civil controlling power, the sole judge to what extent it shall be pushed, and how long it shall last,—yet I know of no instrument of war, which is so hostile to the restoration of speedy and firm peace, as the exercise of that despotic authority over a people accustomed to the blessings of civil liberty, as used by the citizens of every State in the Union from its earliest existence. Nothing more frets, nay enrages, a people accustomed to be tried by courts and juries, sworn to administer the law they have made themselves, than to be brought under guard, even in civil matters, before a tribunal, which disregards the known law under which the complaint is made, and substitutes, in its place, another unknown to the people, harsh and despotic. It, therefore, will be ever the policy of any wise conqueror to restore to the vanquished, as early as possible, their civil institutions and remove, from their midst, so soon as practicable, the sources of martial annoyance. If this be a true line of policy as to conquests, generally, how much more so must it be, as to a State, or a portion of a common country, which under excitement for a while, may have forgotten its higher duties and plunged into civil war.

But whether the policy pursued be the wise or the unwise one, the people when they are restored by gradual steps to their former condition, must always regard each step prescribed by the supreme power and by them accepted and used, as lawful. Having reached this summit by this means, it will not do to undermine any step in the ascent lest they fall again amid a chaos of ruins. This is absolutely necessary in order to protect their own agents during their progress to complete self government, and, indeed, to protect the acts of society in all its tender and delicate relations from being regarded as the doings of a licentious rabble. A contrary doctrine snaps the continuity of government, and creates an interregnum, during which there was no law among the people.

I am respectfully yours,

B. F. MOORE.

*From Kemp P. Battle.*¹

STATE OF NORTH CAROLINA
TREASURY DEPARTMENT.
RALEIGH, Sep. 26, 1866.

Hon.

Thos Ruffin
Chairman, Sinking Fund
Commissioners.
Hillsboro.

Dr. Sir. Application is made to me to obtain from you a *release*, to be filed in my office, of all claim by the Sinking Fund to the old sixes N. C. bonds sold during the war. These bonds have these words (in substance) endorsed and erased. "This bond is the property of the Sinking Fund of N. C. and is transferable only at the Treasury." The signature of the Treasurer is lacking so that the bonds were not *registered* according to law. They are payable to bearer, but the stock board at New York will not call them a good delivery without a certificate from me that the Sinking Fund has executed a release of their claim on them.

I have promised to bring this matter to your attention.

Very truly

KEMP P. BATTLE
Pub. Tr.

From Kemp P. Battle.

STATE OF NORTH CAROLINA,
TREASURY DEPARTMENT
RALEIGH, Oct. 1, 1866.

Gov. Swain will be here this afternoon and I suggest whether it would be convenient to you to summon your Board this week.

I resp'y request that you will convene them at your convenience to consider the question indicated in my former letter, as a matter in which many bondholders are interested.

[P. S.] Governor Swain speaks of going to Chapel Hill on Friday.

¹Kemp Plummer Battle, 1831-1919, who had shortly before been elected state treasurer. He was later president of the University, retiring in 1891 to become professor of history.

From Weldon N. Edwards.

POPLAR MOUNT 4th Octo^r. /86.

My old and Dear Friend

I recd. yesterday at night a Telegram from Treasurer Battle, saying you desired to see me at Raleigh today. It cost me no little uneasiness to decline complying. My little crop of Tob^o. and Fodder—the Planters reliance these times—needed my presence to save it, after exposure to the late long unfavorable spell of weather. I write this to excuse myself for my seeming indifference. The pleasure of *seeing* you would sufficiently reward me for the labor of the trip, but the times call for more energy and diligence than belong to my time of life and the little I have, I know, you would not have me misapply.

I cannot *write* more—but *with you* I should be an incessant *talker*. Pray offer, in your best manner, my kindest Regards to all your Family—and most cordial wishes for yr. and their welfare. How are you? What are you doing? May your elasticity and erectness of mind and Body ever be with you in this life, is the fervent prayer of your old, faithful and affectionate friend.

W. N. EDWARDS.

Hon. Thos. H. Ruffin Senr.
Hillsboro.

From Weldon N. Edwards.

POPLAR MOUNT 11th Octr. 1866.

I have seated myself to answer your very kind letter of the 6th Inst: but am not certain I shall hold out thro' the undertaking—certain I am I shall not be able to say all I wish to say. The “*vis inertiae*” of old age has almost complete ascendancy over the will—and thinking is about as irksome as writing. I tire provokingly soon.

You are right, my very good Friend! in supposing that I would concur in the order made by you and Mr. Swain in regard to the sale made by our Board of the old sixes which belonged to the S. Fund. Our Powers in the matter were ample and unquestionable and the sale was *bona fide* made for an approved consideration—and tho' that consideration may have failed from unforeseen events, it does not release us from the obligations of *good Faith and common Honesty*—whose

promptings, I hope, I shall never disregard. It becomes us to do any act necessary to cure defects in the transfer, and to remove any suspicion of the title which would injuriously affect the Price. To effect this the course pursued seems to me sufficient, and has my entire concurrence. I am much pleased to learn that you imputed to me no default in not meeting you.

Like you, I should take great pleasure in visiting Mr. Davis, have often thought of doing so, but have been deterred from doing so by the distance and labor. There lives not a man whom I would sooner Honor. His great abilities, stern adherence to the rights of man, inflexibility of purpose, his patient endurance in long suffering, eminently entitle him to the homage of all good and sound men. In every situation in which the chances and mischances of life have thrown him, he has shown himself "*a Man*" and it would be among the proudest acts of my life to offer him in person, assurances of my high appreciation of his character and worth, and sympathy for his sufferings. The tender of your companionship and address in such a demonstration is no small temptation to accede to your proposal. But is there not danger in visiting the tide-water region at this season, when the whole atmosphere is loaded with disease? The cholera is at Richmond and a case, I believe, is reported at Petersburg. Old men like us should carefully husband the little time vouchsafed to us on Earth, and not put to Hazard constitutions already worn out by the ravages of time—but I am indulging a spirit of sermonizing to one much better qualified to instruct than to be instructed. Will therefore only add, that should Mr. D. be spared and a proper and suitable occasion offer, we will make an effort to visit him—(should he ever be put upon his trial for instance).

My friend! Whither are we drifting in the rapid current of events? The times are in heavy travail—in all the throes of speedy delivery. What they will bring forth exceed the powers of divination—but of a certainty there will be born to us a large addition to our family of troubles. I had hoped that my elasticity of spirits had fitted me for any calamity, and all the reverses of fortune—but they begin to flag in view of the prospect before us. We may read our destiny in the indications just to hand from the Northern elections—utter ruin and abject degradation are to be our portion. The conquest achieved over the South, I am now convinced was never designed for a restoration of the Union, but to make the Government a prey to wicked men to glut their cormorant appetite by the indulgence of the worst passions of poor human nature. The problem of Rep. Govt. is solved—Paper Guarantees are worth nothing without public virtue—and my life-long political Faith will have to be abandoned—but I am tired—I can't write—will add that I want more than ever to see you—and in

confidence say, I begin to meditate flight. I cannot submit to the batch of countless troubles with which we are to be visited. I know not yet whither to flee, but any place is to be preferred to one which exposes us to the equality and savage rule of the colored race. Was ever such a crime committed against humanity as by their liberation? Was ever an intelligent and civilized People ever afflicted with such a nuisance—without the power of abatement? We are without hope even—the “only medicine of the miserable.”

My health is good—stay constantly at Home to escape a knowledge of the wants and sufferings of my Fellow-men—read much, not for instruction, but for entertainment and abstraction. I am done, cure imperfections and insufficiencies in what I have written.

To Hon. Thos. Ruffin Senr.

Hillsboro' N. C.

From John Kerr.

YANCOYVILLE Nov. 3rd 1866.

At the request of the people of Rockingham county, I have consented to deliver at Wentworth an address on the life and character of the late Gov. Morehead. To aid me in performing that duty acceptably, I take the liberty of requesting of you, at your earliest convenience, a letter communicating such recollections of him as may in your opinion serve to illustrate his private and public character. He was a colleague of yours in what has been called “the peace Congress.” You then saw him acting under circumstances well calculated to develop his principles and impulses as a patriot, at a most trying crisis in the affairs of his country. Please favor me with a statement of your recollections of him when acting with you in that body, *and of your impressions in regard to his character generally*, as a public functionary, a lawyer, and as a private individual. I believe he had come to the bar before you left it, and that he practised in some one or more courts with you, for several years. I should be very glad to know how he impressed you as a lawyer and as an advocate at that early period of his life. Your compliance with this request will lay me under additional weight of obligation and be appreciated as a special favor.

Hon. Thos. Ruffin.

From L. Edwin Dudley.

266 F. STREET,
WASHINGTON, D. C.
Nov. 12th, 1866.

Sir

I am anxious to procure a correct copy of your letter, published previous to the election in North Carolina, relative to the adoption of the Constitutional Amendment.

If in your power you will confer a favor by sending me a copy.

Truly Your Obt. Servt.

L. EDWIN DUDLEY
Sec. Soldiers Nat. Committee.

Judge Thomas Ruffin
Hillsboro

From Weldon N. Edwards.

P. MOUNT 22d Novr. 1866.

I am now ready to repair to Raleigh by your order—and write only to ask that you make our meeting at as *early day as possible*. It is my last public act. I am impatient to get through it. I feel unfit for it and only perform because you *order* it and because I want to see you once more. You are now in your 80th year, so shall I be in Jany. How blessed, my good Friend! we have been in this life. I hope we have deserved what has been vouchsafed to us. Write *me at once*.

God Bless you now and ever

To Hon Thos. Ruffin Sr.
Hillsboro N. C.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT.
RALEIGH, December 3d. 1866.

It is represented to me that you were made referee by consent of parties in the suit—Albemarle Swamp Land Company vs. John W. Keeling—Pending in Washington County, involving the question of the title of the President and Directors of the Literary fund to a large quantity of land. It is suggested that you took some evidence, and

perhaps have some documentary proofs touching the question, in your possession. Do you consider yourself still empowered to act as referee? And, if so, when will you take action in the premises?

You will much oblige me by an early answer, giving me any information relating to this matter which you may have, and which you think would be advantageous to the State.

[Address: Graham, N. C.]

From Matthias E. Manly.

STATE OF NORTH CAROLINA

SENATE CHAMBER

RALEIGH, Dec. 4, 1866.

Honl. T. Ruffin

My Dear Sir.

Your letter of yesterday came opportunely to relieve me from some doubt as to the course for me to pursue.

My own reflections had led me diffidently to the conclusion which you had arrived at. It is a pleasure to me to know that my purpose in respect to resignation meets your approbation and I shall no longer feel any distrust about my position.

My present impression is that the assembly will take a recess before Xmas for 6 or 8 weeks, but nothing is developed certainly as to its purpose.

The great popular clamour that comes up to us from all quarters is protection for a limited period at least to the debtor class. Many of our representatives here say they dare not go home finally without doing something for their relief.

What has been attempted thro the law regulating pleadings in our courts will be brought before the supreme court this winter upon a question of constitutionality.

I think our Assembly may deem it expedient not to adjourn 'sine die' until after that court adjourns its winter session.

My impression too is that the Assembly would like to see the radical policy at Washington developed and be able to form some opinion of whether it was likely to prevail before a final adjournment.

The machinery of State is wearing uneasily in all its parts and I fear to hear constantly of some crash or burst up. The President's message was produced this morning by the papers of this city. It is cautious and well considered and prudently expressed and reiterates his policy of further reconstruction by admitting 'loyal' representatives from the south into congress. It is unsatisfactory to me for want of definiteness.

The President's policy is a compromise and like all compromises partakes more or less of error.

My mind has never assented to the wisdom of the maxim—'In media via tutissimus ibis.' Descending from the eminence occupied by parties contending for principles and attempting to pass between we are sure to fall into the bogs.

If the President had stood firmly on the terms of the army capitulation with the power which he might then have exercised as commander in chief all would have been well. Stephens, Sumner 'et cet' would never have crept out of their holes. I do not think the President a man of great ability or genius and I fear his dexterous yankee foes will fetter him inextricably.

The trustees of the University I am instructed by Charles to say will meet next Monday at 4 o'clock in the afternoon for *business*.

The University Faculty are in bad repute and nothing will resuscitate the institution except a disbanding of the concern.

They are thoroughly rotten and ought to be decently removed from offending the public sight or scent and their places supplied with sensible southern men. I will not vote a dollar to the institution until they all resign. Storm them out.

From Reverdy Johnson.

WASHINGTON
Dec. 5th, [1866.]

My dear Chief Justice.

By this mail I send you copies of two pamphlets recently published by me, of which I ask your acceptance. Hoping that you will agree with me in all, or nearly all that they contain, and that you may be many years yet preserved, for the benefit of your friends and country,

I remain

Sincerely yours

REVERDY JOHNSON.

Chief Justice Ruffin
Hillsboro, N. C.

From Weldon N. Edwards.

POPLAR MOUNT, 7th Decr. 1866.

Supposing from your not calling our Board that there is no purpose for a meeting, I have concluded to go to Raleigh next Monday the

10th expecting to find you in attendance upon the meeting of the Trustees of the U. and I write to ask that you will come D. V.

Things looks ugly at Washington. Where Congress can find authority to eject a state etc., etc., I can't divine. Should they attempt it and the President be called upon to enforce the Guarantee of a Rep. form of Govt. what is to be the consequence? But I can't write. Everyday admonishes me more and more that I am worn out, so old that I should stay at Home, but I must go to Raleigh, as I must see you once more if I can.

With unabated affection and earnest prayers for your welfare.

Hon. Thomas Ruffin Senr.

Hillsboro, N. C.

From David L. Swain.

RALEIGH, 8 Dec. 1866.

The last time I saw you, you remarked in the course of conversation that it would be necessary for us to meet and make our annual report as Commissioners of the Sinking Fund, at the usual time. I took it for granted therefore and hope it is so, that knowing I would be in attendance upon the Board of Trustees of the Univ. at the annual meeting on Monday that you have summoned our friend Edwards to meet us here at that time.

Allow me to intimate that your attendance at the meeting of the Trustees on Monday at 4 p.m. may be very important to the success of our application for the land scrip donated to the State by the General Government for the endowment of an Agricultural College. I wrote to Gov. Graham some days since requesting him to mention this subject to you and to Mr Cameron.

If I am right in my construction of the Act of Congress that the fund can be transferred to no institution that is not owned and controlled by the State, the question is narrowed to a point. The Legislature must either give the scrip to the University or endow a separate College for which the fund is wholly inadequate. Your concurrence with Gov. Graham in the opinion I have suggested would put an end to the controversy. I placed a copy of the Act in the hands of Mr. Phillips the other day, which I suppose he transferred to Gov. Graham. Do me the favor to look into it.

I have just received a note from Prof. Phillips stating that Judge Battle was seized about breakfast time yesterday with a painful attack of *nephritis* (on the left side). Hot water and morphine gave temporary relief but he continued quite ill and will not I fear be able to come down. His son (the Pub. Treasr) went up last night.

The skies are overcast and lowering at Washington, and no one can pronounce with much confidence what a radical Congress may or may not do. My faith in the firmness of the President remains unshaken.

Hon. Thomas Ruffin.

From Matthias E. Manly.

STATE OF NORTH CAROLINA
SENATE CHAMBER
RALEIGH Dec. 11, 1866.

It gave me great pleasure to receive your kind letter of the 29th ult. The gratification which my friends are pleased to say they derive from my election is among the most agreeable of attending circumstances. The interest disclosed by your letter, coming from one whom I have learned to venerate, is especially grateful to my heart.

As a popular reversal of the harsh treatment bestowed upon me by the convention and legislative assembly of the last winter, it is grateful to my feelings; and what is of more importance significant of a great change in public sentiment.

It may be noted also and enjoyed as a providential retribution.

I have had it in my power to commend to Mr. Pool's lips the cup which he caused me to drink last winter. If I could aid in giving the *other Machinator* a dose of the same sort it would please me I confess (I mean my successor on the Supreme Court bench.)

It is said here that Mr. P. is gone to Washington with despatches from the "*Red Strings*" here invoking a complete restoration of military rule, Mr. Logan is nominated for Mil. Governor etc. These are "on dits" however, for the truth of which I do not vouch. There is enough of deviltry and folly about the concern to make it probable.

There is said to be a military order in the hands of the Governor emanating from the "headquarters" of Genl. Sickles, to the effect that the corporal punishment of whipping must be abandoned by our courts until further orders. The governor before he makes it public is endeavoring by an appeal to the President to have it revoked.

If not revoked I suppose we shall soon have it up in the general assembly where it cannot fail to create some consternation.

Members talk about adjourning before Xmas, but I think a *recess* more probable.

Will you be kind enough to give me advice whether I should now resign or continue to occupy my position until near the close of the session.

I become by virtue of my recent election senator on the 4 of March next. After that date I suppose it would not be proper for me to

continue Speaker of the Senate—and to avoid that I propose to resign and have an election of the speaker before the close of the session.

It is a matter of personal indifference to me. I will do whatever my friends think best. Do me the favour therefore to lay down a program for my guidance consulting propriety as well as legalities.

I desire to be kindly remembered in your family circle and tender to you grateful sentiments of esteem and respect.

*From William A. Graham to Garret Davis.*¹

HILLSBORO N. C. Decr. 14th '66

Hon. Garrett Davis

My Dear Sir

With this, I beg leave to introduce to you my friend, the Hon. Thomas Ruffin, the eminent ex chief Justice of North Carolina, who is persuaded to accompany Governor Worth to Washington, to ask of the President the rescission of certain military orders, purporting to reestablish martial law in this State—

And I shall personally appreciate any kindness it may be within your convenience to extend to him and the Governor who will be with him.

With true regards

Your friend and servt.

W. A. GRAHAM.

*Resolutions of the General Assembly.*²

Resolution.

Sending Commissioners to Washington for Certain purposes

Resolved. That three Commissioners be sent to Washington to inquire into the alleged necessity for the order (lately issued by Genl. Sickles) with a view to remove such necessity, if any actually exists; and if it be otherwise, to Correct the misapprehension with regard to the administration of Justice in our State, which led to the supposed necessity. And that His Excellency the Governor, be requested to act as the head of the Commission and to select his Associate Commissioners.

R. Y. McADEN,

Speaker of the Hs. of Commons.

M. E. MANLY

Speaker of the Senate.

Ratified in General Assembly
this 14th day of December, A. D. 1866.

¹ Garret Davis, 1801-1872, at this time senator from Kentucky.

²From the Letter Book of Governor Worth, North Carolina Historical Commission, Vol. I, p. 325.

STATE OF NORTH CAROLINA
DEPARTMENT OF STATE
RALEIGH N. C. Dec. 14th 1866.

I R. W. Best, Secretary of State, do hereby Certify that the foregoing is a true Copy of the Original, in file in this Office.

Given under my hand this 14th day of December 1866.

R. W. BEST
Secretary of State.

STATE OF NORTH CAROLINA

To Hon. David L. Swain.

In Compliance with a joint Resolution of the two Houses of the General Assembly of this State, ratified this day, entitled a "Resolution sending Commissioners to Washington for Certain purposes,"—I hereby nominate and Appoint you one of the Associate Commissioners named in said Resolution.

[SEAL.]

In Witness Whereof, His Excellency, Jonathan Worth, our Governor, Captain General and Commander in Chief, has hereto set his hand and Caused the Great Seal of the State to be affixed. Done at the City of Raleigh this 14th day of December A. D. 1866, and in the ninety first year of American Independence.

JONATHAN WORTH.

By the Governor
WM. H. BAGLEY

Private Secretary.

A similar Commission bearing the same date, was issued to Hon. Thos. Ruffin and Nathl. Boyden.

From William A. Graham.

[Jan. 4, 1867.]

Col. Whitford informed me of his arrival this morning and said he supposed the Messrs. Morehead were here. I will go over to town at 11 o'clock, and ask the gentlemen to go with me to your house. Unless entirely convenient and preferred by you, at your house, we had better adjourn to Mr. Scott's old office now occupied by John.

To Judge Ruffin.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT

RALEIGH Jan 7, 1867.

A gentleman of the bar who desires me not to furnish his name, has sent me inclosed argument, with request that I submit it some eminent constitutional lawyers and return it to him with their views as to the soundness of his argument and conclusion.

Will you examine it—and if you deem it expedient, submit it to Govr. Graham and let me know your views thereon.

The terrible domestic calamity which I apprehended when I saw you, almost disqualified me to discharge my public duties. I grow stronger in my faith that we shall find, in the most conservative feature of our government, the Judiciary, a shield against the most Revolutionary plans of Congress, and just now feel more solicitude for domestic quiet, than I do as to the congressional plan of territorialising the State. Holden having lost the confidence of the white race, is co-operating with our external foes, to engender animosity between the whites and blacks and to get into power through the agency of the poor deluded negro. He has made much impression on them hereabouts and through the agency of secret leagues, I fear will delude the masses of them as he has often deluded and mislead the more intelligent whites.

From F. A. Stagg.

OFFICE N. C. R. R. Co.
COMPANY SHOPS
January 9th 1867.

The following preamble and resolutions were passed by the Board of Directors of the North Carolina Rail Road on to day.

Whereas it is evident that the North Carolina R. R. Co. will not be prepared to pay the Bonds issued by the Co. and dated 1st day of March 1857 which will become due on the 1st day of March next and it is believed that many of the holders of said Bonds will not require the prompt payment thereof on the day of payment upon being assured of the payment of the interest thereon Semiannually. Therefore,

Resolved: That the President of the North Carolina Rail Road Company address a Circular to the holders of the Said Bonds Stating therein that it will be inconvenient owing to the present monetary Condition of the Country to discharge said Bonds on the day they fall

due, but that the said Company will promptly pay semiannually the interest thereon that shall fall due after the 1st day of March next, until the said Company give notice to pay the Principle of said Bonds, and the Company do not expect to pay the Principle thereof within the next five years.

F. A. STAGG
Secty.

From David L. Swain.

CHAPEL HILL, 15, Jan. 1867.

I send herewith the copy of a memorial from the Trustees of the University to the General Assembly prepared in compliance with the request of the Board at their last meeting and intended if approved to be presented on Tuesday the 22d.

I sent a better copy by Judge Battle on Saturday to the Public Treasurer and Gov. Manly suggesting the propriety of endeavoring to secure a very full meeting on Monday 21st and particularly to solicit the attendance of Mr. Cameron, Gov. Graham and yourself. Do me the favour to submit the Petition and this note to their consideration.

I have been at home just three weeks and during that time have been but three times off of my premises. At no previous period of my life have there been such incessant and pressing demands upon my attention.

Hon. Thos. Ruffin.

[Address: Hillsborough, N. C.]

[ENCLOSURE]

To the General Assembly of the State of North Carolina the Memorial of the Trustees of the University respectfully sheweth:

That the present condition of the Institution is one of great anxiety and apprehension and which in their opinion calls for the immediate and efficient action of your Honorable Body.

Without your fostering care they deem it their duty to say and to say plainly the high reputation which its eminent usefulness has hitherto secured, cannot be maintained, if even its existence can be continued.

They deem it scarcely necessary to refer minutely to its past history. The general facts are read and known of all men. It was chartered in 1789 and received its first Student in February 1795. The number of Graduates, during the 71 years of its existence is 1720,—of Partial

Course Students quite as many more, perhaps an aggregate of 3500. All of these, in compliance with the injunctions of the Constitution have been instructed at low prices and without charge for either Tuition or Room Rent. The Institution numbers among its children a President of the United States, distinguished Cabinet Officers, many Members of Congress, Governors of States, Judges, eminent Instructors in Churches, and Schools and in all the learned Professions. At the beginning of the late civil war it had a larger number of Students with a single exception, than any other Institution in the United States.

The monied endowment on the 10th Decr. 1862 was ascertained to be over and above its liabilities \$148,520.26. This endowment was derived from escheated and derelict property and remnants of doubtful debts transferred to the Institution by the Charter;—by a direct grant from the public Treasury of \$10,000 in 1790, from the gift in 1789 of 20,000 acres of Tennessee lands by the late Governor Smith, a still more valuable donation by the late Maj. Charles Girard¹ and by smaller gifts from hundreds of patriotic men and women in every section of the State.

The General Assembly in February 1859. chartered the Bank of North Carolina and with a view to promote the interests of the University, provided in the second section "that the State shall be entitled to subscribe the amount of the Literary Fund now invested in the Bank of the State as part of the Capital Stock and the Trustees of the University of North Carolina also as part thereof a sum not exceeding Two Hundred Thousand Dollars. The Trustees made the subscription accordingly. The Convention of 1861-2 secured an arrangement with the several Banks of the State, which subjected all their available means ✓ to public control. The Convention of 1865, on the 19th October, repudiated the War Debt, thus created,—broke the Banks,—annihilated and more than annihilated the entire monied endowment of the University.

The General Assembly, at the last session appropriated \$7,000 for the temporary relief of the Institution and this sum, together with the above mentioned sum of \$10,000 making the aggregate amount of \$17,000 are the only direct grants ever made from the Public Treasury. It may occasion surprise to learn that the aggregate sum is smaller than the average annual amount appropriated by the Legislatures of our Sister States during the last quarter of a century for the support of the University of Virginia and the College of South Carolina.

The estimated value of the Lands, Edifices, Libraries, Apparatus, et cetera at Chapel Hill is \$150,000. It is smaller in amount than the private benefactions contributed to its endowments during the three quarters of a century subsequent to the date of the Charter and the State by the public acts referred to has withdrawn all and more than all ever derived directly or indirectly from Legislative grants.

¹Gerrard.

An examination of the Records of the Trustees will best illustrate the efforts made by the authorities of the Institution to prolong its existence during the terrible conflict through which it again and again narrowly escaped destruction. They are gratified to know that their exertions were successful, although in this respect, they stand almost alone in the history of kindred Institutions of like character at the South. The exercises were never suspended a day, although the salaries of the Faculty during four years were not equal in value to a fourth of the amount, ordinarily paid accordingly to the economical scale of compensation, which has always prevailed with us.

The Convention of 1776 imposed on all future Legislatures the constitutional injunction "to establish a school or schools for the convenient instruction of youth with such salaries to the Masters paid by the Public as may enable them to instruct at low prices and to encourage and promote all useful learning in one or more Universities" and the General Assembly of 1789 immediately after the adoption of the Federal Constitution, in the Charter of the Institution declares "that in all well-regulated Governments it is the indispensable duty of every Legislature to consult the happiness of the rising generation and endeavor to fit them for an honorable discharge of the Social duties of life, by paying the strictest attention to their education and that a University supported by permanent funds and well endowed would have the most direct tendency to answer the purpose."

The history of no State exhibits instances of more lofty patriotism, far sighted sagacity or fervent piety than will be found among the names of our fathers, who framed the Constitution of North Carolina, adopted the Constitution of the United States and founded the University.

Your Honorable Body, by the Providence of God, stands now where Ashe, Dr. David Caldwell, Caswell, Davie, Graham, Iredell, Willie Jones, Johnson, Lenoir, McDowell, Moore, and Person were placed in 1789. At such a time we venture to suggest that it behooves your Honorable Body to look enquiringly to the past as well as anxiously to the future, to profit by the experience of your predecessors, to endeavor to emulate their wisdom and sagacity and avoid their errors.

To this end they pray that a Committee may be appointed to consider and report upon a scheme for the re-organization of the University, by which they hope to restore its former prosperity and increase its usefulness.

A transfer of the Land Scrip recently given to the State by the United States for the establishment of an Agricultural College affords, in their estimation, the best if not the only means of accomplishing this purpose.

It seems plain that whatever else may be its character the Institution must be a public one, completely and directly under the control of the State. The Scrip covers 270,000 acres of Land, the Marketable

value of which at present, is about 50 cents per acre or \$135,000 in aggregate amount. By the conditions of the gift no expenditures can be made for the purchase of lands, erection of edifices, et cetera, of more than 10 per cent, or about \$13,500, less than a tenth of the value of the grounds, edifices, libraries, apparatus and cabinets at Chapel Hill.

The remainder of the Fund is to be vested in some safe stock, yielding not less than 5 per cent and the amount thus funded is to be preserved intact, and intangible forever. If from unskilfulness of investment or any cause whatever it shall be lost or diminished, the State is bound to the General Government to make it good.

The Institution must be therefore one over which the Legislature shall have entire and continuous control.

There is no difficulty in pronouncing that the University, by the creation of the two Professorships, intended to be immediately established—one of Agriculture, the other of the mechanical Arts, in addition to the nine well organized Professorships already in existence, will be entirely competent to enter upon the immediate performance of all the purposes contemplated by the General Government. The landed estate in a central and salubrious locality is ample in extent and presents the diversity of soil and surface, so essential to the prosecution of study and research in the most important departments of Natural History. Its collection of Books is greatly larger and more valuable than to be found elsewhere in the State, and its Philosophical and Chemical Apparatus and its Cabinets and Collections quite equal to any demands that the uses of such a school are like to make upon them.

The Trustees entertain the opinion that the association in one school of those who are designed for what is called practical life with those who are destined for professional and literary pursuits will exercise a wholesome influence upon both classes. The future farmers and planters of our country may gather some added refinements of thought and taste from free intercourse with those who are engaged in purely literary studies, while the temper of the latter class may be made more practical by habitual fellowship with those whose studies have a more obvious character of reality and present usefulness.

It is doubtless moreover from considerations of this nature that the act of Congress specially provides that studies of the former character are not to be excluded from the Agricultural College.

We should not overlook likewise the greater economy in the use of our forces that comes from such a combination of Instructors. The same teachers may to a great extent give instruction in both the University and Agricultural departments. It is not unlikely that many of our students in either department may follow out some special

course of study in the other also. The planter will be none the less successful in his profession for having thus gained some tincture of classical learning.

In this connection the Trustees recur with proud satisfaction to the fact that since 1837 the University has been pre-eminently the nursing Mother of humble talent and merit,—that no one however penniless, with qualifications which promised usefulness, has ever found her doors closed against him; and while her Halls have been crowded with the favorites of fortune from every State in the South and South West, the poorest boys in North Carolina have met them here on equal terms, shared in their best advantages, received her highest distinctions, and now occupy conspicuous positions of honor and usefulness in every section of the State.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT

RALEIGH Jan. 19 1867.

Our friend Eaton is not the author of the article, which at the instance of the writer of it, I submitted to your review. I am strictly enjoined not to give his name.

I took the same view of the article which you do, but could not state so clearly as you have, the logic by which I reached my conclusion.

From Matthias E. Manly.

STATE OF NORTH CAROLINA.

SENATE CHAMBER,

RALEIGH Jan. 23rd, 1867.

I desire to call to your special attention the opinion of the Chief Justice in the late case of 'Habeas Corpus' published in the 'Sentinel' of the 22.¹

It seems to me to be anti-southern and sinister and fully in harmony with the radicalism of the U. S. Congress.

His principles of international law touching the results of War are drawn from Grotius and other early writers when treating of wars between pagan nations.

¹The opinion referred to follows this letter.

We had supposed that under the benign influences of Xtian civilization that wars were no longer waged to enslave peoples but to right specific wrongs.

And the objects being accomplished the belligerent peoples stood organized, as they stood before. But it appears all this is wrong and we must set ourselves back some centuries and start afresh upon pagan principles. Radicalism has obviously been in concert with these principles but I was not prepared to find our highest court *tuning to the same pitch*.

I trust you will deem this matter of sufficient gravity to take some notice of it.

I doubt very much whether the commission which has most recently been sent to Washington is doing the state any real service.

It is composed of men whose opinions are all *radically* wrong. And they have most probably been playing into the hands of the usurpers. It is rumored on the streets here that one of them, Genl. Leach who returned last night, holds out the idea that while the rejection of the 'Howard amendment' was proper at the time we passed upon it it may become advisable to reverse our action etc.

God help us for men seem to have lost their senses and their manhood.

* * * * *

Hon. T. Ruffin.

[ENCLOSURE]

OPINION OF CHIEF JUSTICE PEARSON.
HABEAS CORPUS. ¹

In the matter of William H. Hughes.
Graham and Harris for Petitioner.
Bragg contra.
Moore for Sheriff of Granville.

Pearson C. J.—At June Term 1866, upon the request of Gov. Worth, the Judges of this court certified to him an opinion in these words:

RALEIGH, June 21st. 1866.

His Excellency Gov. Worth:—In reply to your communication of the 20th. inst., I have the honor to say, the Judges concur in the opinion that the word, "crime," in the act of Congress to which you refer, embraces all offences against the public, of an exaggerated or infamous character, as contra-distinguished from trivial offences to which the milder term "misdemeanor" is applied. The dividing line is not

¹From the Sentinel January 22, 1867.

plainly marked in the books, and to convey the meaning, we must resort to instances. An assault with intent to commit felony, a conspiracy, cheating with false tokens, are "crimes."

An ordinary assault and battery, retailing without license, are misdemeanors.

In determining what is a crime, it is proper to be governed by the laws of the State in which the offence is alleged to have been committed.

The grade of offence may be considered as marked by the punishment; if it be infamous or degrading, as the jail or penitentiary, the offence is a crime, and properly associated with "treason" and "felony"; if the punishment be only a fine the offence is a misdemeanor, and is excluded from the operation of the act of Congress, by the words "treason and felony." "*Noscitur a sociis.*"

(Signed) R. M. PEARSON,
Chief Justice S. C.

This opinion covers almost the whole ground. It was properly conceded on the argument by Mr Bragg, that in regard to points of law the Court has power, as a co-ordinate Branch of the government, to review and control the action of the Governor under a writ of Habeas Corpus. On the other hand it was conceded by Mr. Graham, that, in regard to any other matter within the discretion of the Governor, the Court had no right to interfere.

It was urged by Mr. Graham, 1st, that cheating by false *pretense*, as distinguished from false *token*, was not a crime at Common Law, and was made a crime by statute in the State of New York *after* the adoption of the Constitution of the United States, and consequently is not embraced by the word "crime" as used in that instrument.

It may be, that in the construction of a treaty between independent nations, where a particular offense is specified, "forgery" for instance, as in Windsor's case, cited in Wheaton, Int. Law 117, it was well decided that what was or what was not "forgery" depended on the state of the Law at the date of the treaty, and that a statute passed afterwards making "a false entry, by a clerk in Bank," forgery, was not embraced by the treaty. Ours is a different case. We are not putting a construction upon a treaty between independent nations; we are putting a construction upon a *Constitution* adopted by the people of the United States in order to form a more perfect Union, establish justice, etc." In this instrument we find a provision that any person charged with treason, felony or other crime, shall be delivered up, etc. The words are general; no specific offence, as forgery, is named, and, in the very nature of things, this being a part of the fundamental law of the United States, has reference to such changes in the Criminal law, that might thereafter be made in any State of the Union; so the position, that a rule of construction which may have been properly applied to a treaty, is applicable to the Constitution of

the United States, is untenable. The clause under consideration should be construed, in connection with the clause immediately preceding, "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," and, as by the one, a citizen of North Carolina going to the State of New York is entitled to all the privileges of a citizen of that State, it is plainly the meaning of the other, to subject him to a punishment for violating its Criminal Law, as if he was a citizen of the State, and to take away all chance of *dodging behind State Lines*. It is clear that the facts set out by the indictment in this case constitute a crime according to the statute of New York, as construed by the Courts of that State.

2nd. It was urged in the second place, that as the prisoner had been heretofore delivered up by Gov. Worth, and was allowed to leave the State of New York, upon entering into a recognizance for his appearance, the Governor had no power to order his arrest, a second time; either on the ground that his power having been once exhausted, had spent its force, or on the ground, that a forfeiture of the recognizance was an atonement for the offence; neither of these positions can be maintained. It may be, that had the prisoner been discharged for want of prosecution, it would be in the discretion of the Governor, to refuse to order his arrest a second time; but where a recognizance is taken and the prisoner fails to appear, the power of the Governor to order a second arrest cannot be questioned; the suggestion that a forfeited recognizance is to be treated as an atonement for the offense, does not admit of discussion.

It follows that the prisoner must be remanded, provided Jonathan Worth is rightfully filling the office of Governor of the State of North Carolina. That point was not made on the argument, but as the objection has been gravely urged elsewhere, a decent regard for public opinion makes it proper to state the grounds on which it is believed that the offices of the State are rightfully filled. See *State vs. Lane*, 4 Ired, 434.

The whole matter depends upon the question, Was the Convention of 1865 a rightful Convention for the purpose of reorganizing the State government, or was it an "unlawful assembly?"

1st. It is said that the President had no power to cause measures to be adopted for calling the Convention, and that his act was one of usurpation and in violation of the Constitution of the State.

It is provided by the Constitution of the State, Art. 4, Sec. 1, "No Convention of the people shall be called by the General Assembly, unless by the concurrence of two-thirds of all the members of each House."

The Convention was not called in pursuance of this provision; and it may be conceded, that if the Convention had been called prior to the

revolt and surrender, it would have been an "unlawful assembly": but the Convention was not called until after the State had revolted, and had been subjugated. This makes the difference.

The Convention was not in pursuance of the Constitution of the State, nor was it in violation of that instrument. It was neither constitutional nor unconstitutional, but *extra* constitutional; that is, it met at a time and under circumstances, not provided for by the Constitution. It was the creature of the emergency—the only mode by which it was possible to extricate the State from the condition of anarchy into which it had fallen, by the attempt to withdraw from the Union, which resulted in subjugation.

The frame of the government of the State still existed; there were the offices but no officers qualified to discharge the duties. Those officers who held during good behavior had been required to renounce their allegiance to the government of the United States and to take an oath to support the government of the Confederate States. Such officers as had been elected or appointed, after the revolt, were required to take a like oath. It is provided by the Constitution of the United States, Article VI, Clause 3, "The Senators and Representatives before mentioned, and the members of the several State Legislatures, and Executive and Judicial officers, both of the United States and several States, shall be bound by oath to support the Constitution of the United States, and consequently, no one of them was qualified to discharge the duties of their respective offices. There was no governor, no members of the General Assembly, no Judges. Every office in the State was politically dead, and the effect the same as if they had all died a natural death. How could the government of the United States recognize as rightful officers of the State, men who were not bound by the oath required by the Constitution, but on the other hand were bound by an oath to support another government, and who had been elected or inducted into office at a time when the State was in open war with the United States?

Here then, was a state of anarchy—no Convention could be called by the General Assembly, for there were no persons qualified to act as members of the General Assembly, and there was no way to have the State offices filled, whether Executive, Legislative, or Judicial, except by a Convention of the People. In this condition of things, so far from its being a matter of complaint, it was fortunate that the President of the United States, either as President of the United States, or as Commander in Chief of the conquering army, under the law of nations, had power, without reference to the Constitution of the State, to appoint a Provisional Governor, and, through his instrumentality, so to provide, that the people of the State might, in a quiet and orderly manner, elect delegates to a Convention, and thereby give the wheels of the State Government a new start.

✓ If we consider the State, after the revolt and surrender, in the condition of an independent nation, that had been conquered, (and this is the most favorable light in which the subject can be viewed, for thereby the question is relieved from the imputation of treason,) a well settled principle of the law of nations makes it the duty of the conquering nation to take care that the people conquered shall be provided with laws, or shall be allowed to provide themselves with laws, and thereby prevent a state of anarchy.

The act of the President, so far from being a usurpation, was a discharge of this duty in its mildest form; and the people of the State did accordingly avail themselves of the opportunity thus presented, such an act of despotism as to make the Convention an unlawful Assembly, and the whole proceeding void and of no force.

2d. It is said, in the second place, assuming that the Government of the United States had the power to adopt the necessary measures to enable the people of the State in a quiet and orderly manner to elect delegates to a Convention, the act of the President excluding a portion of our best citizens from the right to vote for, and be eligible as, delegates, was in violation of our fundamental law, and such an act of despotism as to make the Convention as unlawful Assembly, and the whole proceeding void and of no force.

Here again the same fatal error underlies the whole train of reasoning. It is strange that heated feeling could in so short a time divest the mind of all impression of the stern fact, that after a bloody war, the State had surrendered without stipulating for terms (there being no terms except that the soldiers were allowed to go home unmolested) and lay prostrate with no further power of resistance, her people taking the amnesty oath, suing for pardon, and asking in the name of humanity, and the principles recognized by the law of nations, to be saved from the horrors of anarchy!

✓ We were not in a condition to invoke the aid of "our fundamental laws"—the proceeding was avowedly extra-constitutional, and we could appeal only to the laws of nations. Whether the portion thus excluded constituted the best or the worst of our citizens, and whether the number excluded amounted to 100 or 500, does not affect the principle, and such extraneous circumstances should be put out of view.

We have then this state of facts: After a surrender without stipulating for terms, the United States Government undertakes, in discharging the duty imposed by the Law of Nations, to relieve our citizens from a state of anarchy; and to this end it seemed good to the Government of the United States to permit the people of the State to elect delegates to a Convention, but to exclude from the privilege of voting for, and being eligible as delegates, those citizens, who, having participated in the war, had *not obtained* pardon. The question is, was this exclusion a violation of the law of nations and an act of despotism?

We have seen that, according to the law of nations, the conquering nation may either impose such laws as to it seems fit, or may allow the citizens of the conquered nation the privilege of framing laws for itself. Can any principle be suggested, which forbids the conquering nation in adopting this letter and milder course to exclude from this privilege those citizens, whom it deems dangerous and not fit to be trusted? In other words, does the fact that a portion of the citizens are not considered fit to be trusted, impose upon the conquerer the alternative, either to adopt the harsher course of imposing such laws as he sees fit, or to wait until such time as he can be assured that all of the citizens have become fit to be trusted, and in the meantime keep the conquered Country under military law or leave it in a state of anarchy? If this were so, it would be in the power of a handful of men, who choose to hold out in opposition after the nation is subjugated and the country in possession of the conquerer, to force him to impose such laws as he sees fit, or else to continue his military rule or leave the country in anarchy. If the conquerer has, by the law of nations, a right to impose such laws as he deems fit, why may he not confer the privilege of framing the laws upon such portion of the citizens as in his opinion are worthy of the trust? The greater includes the less, and upon what ground can those, whom he deems unworthy of the trust, complain that the privilege is not also conferred on them? A naked statement is sufficient to dispose of the question, and it is almost too plain to talk about, when we bear in mind that it must be judged of by the law of nations, and that we are not in a condition to restrict the will of the conquerer by invoking our fundamental law. Take the most recent application of the law of nations. Hanover is deprived of its King and of its government and laws, and annexed to Prussia, for such is the will of the conquerer; and this is done according to the law of nations. Can we look to that law for a principle by which to restrict the conquerer, if he sees fit to adopt the milder course, and *put him under an obligation* not to exclude any portion of our citizens from the privilege of participating in framing the laws?

It is true, should a conquerer, while professing to allow the citizens the privilege of framing laws for themselves, exclude the greater part of them and confine it to a few who may be deemed tools of his, it would detract from the magnanimity of the act, and be, in effect, the same as if he had imposed such laws as he saw fit. There is no ground to support a suggestion of the kind in this case, and even if there was, it could not affect the principle.

3. Fratricide is a more heinous crime than the killing of one with whom there is no tie of kindred. Civil war is more aggravating than a war with a foreign nation, and the conclusion in favor of the power of the United States, and the manner of its exercises, receives additional support by taking into view the fact that our State is

not an independent nation, but is a member of the Union, and the attempt to withdraw, and the war consequent thereof, was a revolt, and subjected our citizens, who participated in it, to the charge of treason, unless the State had a right to secede. That question we must suppose to have been settled by the result of the war. So the Government of the United States, in discharging the duty imposed upon it by the law of nations, and the provision of the Constitution which requires it to guarantee to every State a republican form of government, was fully warranted in considering those individuals, who had not been pardoned, as still disaffected and not worthy to be trusted in the work of reorganizing the State government. Ours is a complicated form of government; the citizen takes two oaths of allegiance, one to the government of the State, the other to the government of the United States, and both governments *act directly upon the individual*. So when the State attempted to withdraw, and revolted, a condition of things was presented which was not provided for in either Constitution, and seems not to have been contemplated by the framers. The citizens were obliged to violate their allegiance either to the one government or the other; those who made the election to adhere to the State violated their allegiance to the United States, and those who elected to adhere to the United States violated their allegiance to the State. Although the unforeseen condition of things, which forced upon us the necessity of violating our allegiance to the one government or the other, cannot be deemed a *justification* of such of our citizens as elected to adhere to the State, (except upon the assumption that the State had a right to secede,) yet it is certainly a mitigation of the wrong, and to this is to be ascribed in a great measure, the proclamation of general amnesty, and the liberality with which pardon has been granted, to such as fell under the excepted cases. A portion of our citizens had not obtained pardons. Did this fact put the Government of the United States to the alternative of waiting until such times as all of these persons should approve themselves fit persons for pardon, and, in the meantime, continue the military occupation of the State or leave it in a condition of anarchy, without legislative, judicial or executive officers, or else to allow those who, being unpardoned, were looked upon by the government of the United States as traitors, to participate in forming a Convention for the purpose of providing measures to fill the State offices.

It seems to us very clear that the exclusion of those persons was not a violation of the law of nations, or the clause of the Constitution above referred to, and that so far from the act of the President being one of usurpation and despotism, he could not have consistently have done otherwise. These persons either had applied for pardons which were refused, for reasons of which he was the sole judge, or else had omitted to apply, because they were unwilling to take the oath of

allegiance to the United States, or because they persisted in the opinion that they had committed no act which needed a pardon.

Suppose the President had caused these persons to be arrested, and they were confined on the day of election, and thus practically excluded from voting and acting as delegates to the Convention, would that fact have put it out of the power of the President to enable the people to hold a Convention? No one will so contend; and yet their exclusion by the proclamation was the same in effect, saving the omission of the harsher part, that is the arrest and confinement which occurred in only one instance. So to urge the exclusion of this handful of unpardoned traitors, as the government of the United States considered them, as a ground for holding the Convention to be an unlawful assembly, and as a consequence that the State has had, and still has, no Governor, members of the legislature, Judges or other officers, who can rightfully fill their respective offices, is "to trifle with a grave subject."

4. Whether the act of the President was one which required the concurrence of Congress is a question into which we need not enter, for taking it to be so, Congress has, in many ways recognized and confirmed the action of the President in regard to the re-organization of the State Government by filling its offices. No other need be referred to than the joint resolution by which certain amendments to the Constitution of the U. S. are proposed to the Legislature of the State of North Carolina, for adoption or rejection, thereby recognizing the Legislature as a lawful body, and, of course, recognizing in like manner the Convention under whose authority the Members of the Legislature were elected. Indeed, although there may be some diversity of opinion upon the question as to the power of the President without the concurrence of Congress to enable the people of the State to take measures by which to resume a Constitutional relation as one of the States of the Union, (about which we wish to intimate no opinion, because it is not involved in the matter under consideration.) there would seem to be no doubt as to the power of the Executive, either as President or as Commander of the army, to appoint a Provisional Governor, and through his instrumentality enable the people of the State to meet in Convention and take measures to fill the State officers. We have seen that, according to the law of nations, it is not only the right but the duty of the conquering nation, either to impose a Government on the conquered people, or to allow them to frame one for themselves, so as to prevent a condition of anarchy. When the President entered upon the discharge of this duty, it surely was not for the conquered people to question his powers, and the mere non interference of the Legislative branch of the Government was such an acquiescence as to amount to a sanction, on its part of all acts, which, by the law of nations, it was the duty of the conquering nation either to do, or to allow to be done.

At all events it seems to us entirely clear that the officers of the State, who have been by this means, and in this manner, chosen and inducted into office, have rightful jurisdiction and power to discharge the duties of their respective offices, until some other provision shall be made for the Government of the people.

5. We do not enter upon the question in regard to the extent of the power of the Convention, for it is certain that, if rightfully convened, it had power to adopt all measures necessary and proper for filling the offices of the State, which is the only question now under consideration.

It is considered that the prisoner be remanded.

R. M. PEARSON.

*From Alfred M. Waddell.*¹

WILMINGTON N. C. Jan 26th, 1867.

Enclosed I send you an article which I have written and published in the Wilmington Journal, in vindication of the profession upon (which you have shed honor for a half century, and which has been (in my opinion) for many years disgraced by the present Chief Justice of the Supreme Court. Although but a young and very humble member of the Bar I feel this Hughes case furnishes a fit opportunity even for me to complain, and, as the traditional reverence for the Bench seems to have degenerated in to a trembling submission to anything which may be uttered by those who wear the ermine, I have undertaken publicly to denounce what is privately condemned by every one else. Whether I be commended for *discretion* or not is a small matter. Being solely responsible for the article I am perfectly willing to abide the consequences and if the Chief Justice or any of his friends are guilty of the indiscretion of noticing the article I feel quite prepared to follow it up with more and better of the same sort. The *State vs. Harry Love* and the *Williams* case tried by Judge French during the war will furnish some material for a second dose.

Now, Sir, I have taken a great liberty with you: but you must remember that although I am unknown to you, it has for several years been my privilege to read and profit by your thoughts on legal subjects and to know the relation you sustained to the Bar and Bench in No. Carolina, and particularly to the Chief Justice—and in this I find my justification.

Very Respectfully

A. M. WADDELL.

¹Alfred Moore Waddell, of Wilmington, a native of Hillsboro, had been a lawyer and editor prior to the war, and had risen to the rank of lieutenant colonel in the Confederate service. After the war he was a member of Congress from 1871 to 1877.

[ENCLOSURE]

For the Journal.

THE SUPREME COURT—THE HUGHES CASE—TRAVELING
OUT OF THE RECORD.

One of the gravest faults of which a Judge can be guilty, is that of springing out of, the facts before him, is a mere dictum (as it is technically termed) and of no binding authority. These *dicta* will often be found in judicial decisions, and to them is attached as much, or as little importance as the character of any Judge may, in the reader's opinion, justify, but they are not *authority*. It may be, and in revolutionary times it is, difficult to avoid intermingling political questions with those of a purely legal nature; but with the former an American Judge has nothing to do, except perhaps where questions of constitutional law may be involved, wherein he is restricted to the question of power, or of International Law as applying between governments. If he discusses the *political* course of any man or party, he soils his ermine, and prostitutes his office. The independence of the Judiciary is the sheet-anchor of every free government. The illustrious Chief Justice Marshall said, "the greatest curse which angry Heaven could inflict upon a sinning people, would be a dependent Judiciary."

No State has ever had a purer or more independent Bench than North Carolina. Chosen for high character and legal attainments, and elected by the Legislature for life, our Judges have been the peers of any in America. The opinions of one, at least, of them have been quoted as authority in Westminster Hall, and up to the present time the judicial ermine of the State has been spotless. But we confess to a sense of shame and sorrow on reading the judgment of the Supreme Court in the *habeas corpus* case of Hughes, published in the *Journal* of the 24th inst. Hughes was charged with cheating, by false pretences, a citizen of New York, and a requisition having been issued by the Governor of New York to the Governor of North Carolina for him, and having been complied with, and Hughes having sued out a *habeas corpus*, the only questions presented for the consideration of the Court were—1st. Was his offence a *crime* according to the meaning of that word in the United States Constitution so as to justify his surrender to the Governor of New York?—And 2d. Could the Governor of North Carolina arrest and deliver Hughes a *second time*, after he had once been allowed to leave the State of New York

on bail? These were the only questions presented, and the Court very briefly decided both in the affirmative.

We deeply regret for the honor of the Court and the State, that the judgment did not end with the announcement of the decision. But, while admitting that no such points were made in the case, the court, oppressed by "a decent regard for public opinion," proceeded through the Chief Justice to discuss at great length the question whether Governor Worth is rightfully in his office; whether the Convention of 1865 was a rightful Convention, or an "unlawful assembly," and whether the Legislature called by the Convention, and the officers of the State (*including themselves, of course*) were lawfully appointed or elected! The court starts out in consideration of these questions with the admission that no constitutional law was involved, as the Convention was "neither constitutional nor unconstitutional." Of course no municipal law was involved, and as international law could not apply, according to the theory of the Court, there was nothing left to discuss but *a question of politics*—and there are two melancholy columns of this, which will forever stand as a reproach upon the pages of our Reports. Being nothing but a political essay, they are grossly out of place; being a very weak political essay, they reflect no credit on the statesmanship of the Court, *and being generally accepted as a reply to an anonymous newspaper article, commonly attributed to the late Chief Justice of the Court*, they strongly savor of the hustings.—Whether the conclusions of the Court on these political questions are right or wrong, is not a matter of the slightest consequence, as they are not binding.—The impropriety lies in the expression of any opinion at all; and the fact that the opinion is interlarded with slang phrases and bad English does not alleviate our sorrow in the least. Nor do we find greater consolation—after reading a long defense of the President's "policy"—in the discovery that the argument resolves itself into a vindication of the authority of the Court, and finally tapers to the following sickly conclusion: "*At all events it seems to us entirely clear that the officers of the State who have been by this means, and in this manner, chosen and inducted into office have rightful jurisdiction and power to discharge the duties of their respective offices until some other provision shall be made for the government of the people*" !!!

Reverence for authority is a characteristic of the people of North Carolina, and the Supreme Court have always received a much larger expression of this sentiment than any other department of the State government. They have always enjoyed the profound respect of the people, and we are gratified to say that as a body they have always deserved it. But it will not require many such "opinions" as this one in Hughes's case to bring that tribunal into public contempt. We confess to some surprise at not seeing a *disclaimer*, of all that follows

the decision of the two points raised, by one or the other of the associate Judges—if, for no further reason, simply for that it was unnecessary and unbecoming the dignity of the Court.

The little eccentricities of the Chief Justice have heretofore been overlooked in view of his own great learning, and the pure and steady lights by his side, but we should deplore as an indication of the decline of public virtue, that state of indifference which would suffer a judgment like the one under consideration to be pronounced without evoking a comment.—There is an esprit de corps among the Bar which prompts them at all times to support and defend the judiciary in the discharge of their duty, and we should grieve to see any abatement of this spirit among them; but it is no evidence of the existence of this spirit to be silent in the presence of a judicial impropriety affecting the public interests. There are no public officers who should be so carefully shielded from unjust attacks as the judiciary, for reasons sufficiently obvious, and for the same reasons there are none to be held to such strict accountability. The sturdy refusal of Lord Coke to yield either to the persuasions or threats of his King covered him with glory; his brutal treatment of Sir Walter Raleigh rendered him infamous.

We devoutly trust that the time may never come in North Carolina when the Court—which has thus unnecessarily gone out of the way to proclaim that it is a Court and to lay down a certain political theory—may have either to swallow its own decision, or to repeat it; and we further express the hope that if, hereafter in any similar vagaries the Court should again accidentally confront the question whether a State had a right to secede, it will not deem it absolutely necessary again *judicially* to “suppose that question to have been settled by the result of the war.”

VINDEX.

From David L. Swain.

CHAPEL HILL, 6 Feb. 1867.

I was very much obliged to you for your two letters, one handed to me on the train on the way to Raleigh, by Mr. Cameron, and the other delivered by Gov. Worth on my arrival. Though greatly regretting your absence as well on account of the cause, that produced it, as the apprehension that it might be fatal to success in the Board, I took care to make your letters answer the next best purpose by shewing them to Capt. Davis and Col. Cowan prominent advocates of our scheme in the Ho. of Commons. I was not disappointed in the effect I hoped to produce. They and others received inspiration from the aged and imparted it successfully to the young. The decisive majority on the second reading will insure final success. The Holden men I believe

without exception were rallied against it, led on by Genl. Logan who offered an amendment the acceptance of which it was supposed at the moment would secure his vote.

The judicial opinion to which you refer has I apprehend disappointed all parties and failed signally to produce the end designed. It decides that N. C. is a state, and therefore even to claim the advantage of the reasoning at the close, the Standard does not choose to publish it, still less to rely upon it. You are probably aware that the name of the Chief Justice, sustained by a formidable array of endorsers is before the cabinet for the first vacancy on the Bench of the Supreme Court of the United States. This fact has given rise to the suggestion that like his great prototype, while "*dodging behind State lines*" he is fishing for salmon," with better prospect at present of securing fish, fowl, or good red herring! As the Standard neither endorses nor publishes, Forney will not probably give it a place in the Chronicle, and an elaborate effort, the result of months of deep cogitation, will serve only to disappoint and mortify his best friends.

We are getting on quietly now without any substantial change of numbers. As soon as notified of the final passage of the Bill in relation to the script I must go down to Raleigh and consult our friends as to the best mode of rendering it available, and will be glad to have your views on the subject. At the opening of Spring I will be strongly tempted to go North, and ascertain the mode of organization of Agricultural Colleges which promise most usefulness.

Hon. Thomas Ruffin.

[P. S.] I have not as yet met with the Queen's English, but will send you a copy if I shall chance to obtain one.

From William H. Bagley.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT
RALEIGH N. C. February 9th 1867.

Hon. Thomas Ruffin
Hillsboro, N. C.

Dear Sir—

I am requesting by Gov. Worth to forward you an article sent to him by the Author of a previous article, in answer to your objections to the first.

The Governor says you did not guess correctly before—but that the Author is a great admirer of yours.

Very Truly Yours
WM. H. BAGLEY.
Private Secretary

[ENCLOSURE]

In an argument sent to Governor Worth and by him submitted to Judge Ruffin, the following positions were taken:

First—That the State of North Carolina had suffered a wrong by the action of the Senators now exercising the authority of the Senate of the U. S., by being deprived of her equal suffrage in that body.

Secondly—That upon well established principles of Law there is, or should be, a remedy for every wrong.

Thirdly—That the Supreme Court alone was authorized by the Constitution to construe that instrument (or Law) and in so doing to afford a remedy for this wrong to the State, when a case was properly brought before the Court.

Fourthly—That as there is no other or no specific way of getting a case properly before the Court and thus obtaining a remedy for this wrong, it would have to be done by a Mandamus or else it was without remedy.

Fifthly—That the Supreme Court could issue this writ of Mandamus to the said Senators because there was no mode of giving relief, and there must be a remedy for every violation of the Constitution. Before giving Judge Ruffin's objections to the third, fourth and fifth positions (the first and second he approves), it should be stated that the Judge seems not *exactly* to have caught the intention or object of the argument. He says he does not agree that "we have a remedy for that wrong by Mandamus to the respective Houses, to admit the Delegates we have chosen." It was distinctly stated that as to the Members or *Delegates*, the *discretion* of admitting or not, or judging of their qualifications, was given by the Constitution to the Senate *alone*. The question is how to remedy the violation of the proviso to the 5th Art. of the Constitution: He also says that "the right to representation in the one house is as explicitly declared in the Constitution as it is in the other." This is so, but a State may be deprived of her representation in the House, by amending the Constitution, but in the Senate *only* by the consent of the State.

Judge Ruffin thus gives his objections—

First—"I have not the least doubt that the Judiciary has power, nay is bound, to declare an act of Congress, much more the acting of either house, unconstitutional and therefore void—when that question arises in a judicial proceeding between parties, or between the Government and a private party, in a proceeding which under the Constitution, comes within the jurisdiction of the Courts. But the question here is whether this be within the jurisdiction of the Courts. Whether one of the great Depts. namely, the Judicial is so far superior to the others, that it can by writ directly command the others *to perform or refrain* from performing any particular act? I think not and especially

that there is no authority to direct such a Mandate to that one of the Departments, the legislative, which is not inferior to the Judicial, but in its nature and supremacy in making laws, seems to be the highest of all public authority saving only that which rests in the people to alter the Fundamental Law." Should not the Judge also except the Fundamental Law itself.

Secondly—"There is no precedent for such a use of the writ of *Mandamus*."

Thirdly—"There is no mode of enforcing it. A Court will never issue a writ when obedience to it cannot be compelled. If a writ of *Mandamus* in a proper case be issued and not obeyed the next step is to compel obedience by arrest and imprisonment." This he says would be against the privileges of Senators and if it could be done and were done, would destroy the Government, and hence he concludes that on this "point the argument is not supported by authority and is fallacious in reasoning."

Great hesitation is experienced in venturing to reply to the argument of this learned Judge, where no direct authority can be quoted. But as Constitutional truth alone is sought, the following answers are submitted.

Answer to first objection—

Suppose the Mandate or command should not be to perform or to refrain from performing a particular act, but to show cause, if any they had, why the Supreme Court should not declare a particular act of theirs unconstitutional and therefore void. The U. States (the Sovereign) commands Senators, or if you please the Senate, (the servant) to show cause why the Sovereign's chosen Arbiter (the Supreme Court) should not declare a certain act of said servant contrary to the Sovereign's will—unconstitutional and therefore void. Would not this avoid the Judge's objection?

Under the Constitution each of the great Depts. might be considered superior to the other two in its own sphere. But it is believed to be more correct to say, that the question here is, the will of the Sovereign, and by whom said Sovereign has chosen to declare said *will*. Each Dept. is, so to speak, a servant of this Sovereign, and to each certain duties are assigned in a written order of the Sovereign—the Constitution. To the Judiciary alone is assigned the duty to declare the meaning of said order or will, when any doubt or disregard shall arise or happen. And when so declared it is binding on all, not because the Supreme Court says so, but because in executing a power granted, it declares the will of the Sovereign. As to the special impropriety of issuing a mandate to the Legislative Dept. it is not perceived why the above reasoning does not apply, particularly if the view of the Sovereign may be supposed to be properly represented by the Federalist, Mr. Chancellor Kent and Mr. Justice Story, for they all consider the Legislative the strongest servant and therefore most apt to over-

leap its Sovereign's will because it has power to execute its own will; and they consider the Judiciary the weakest servant, because it has so little power to execute its own will, and it is therefore intrusted by the Sovereign with more discretion in declaring his will.

Why then has not the Supreme Court the right and power on the direct application of the State of North Carolina, to declare this act of certain Senators unconstitutional and consequently void. No remedy less than this would reach the wrong. Suppose Gov. Graham goes to Washington, is arrested, pleads his privilege as a Senator-elect, (he cannot call himself a Senator, because he is not qualified) the District Court disallows the plea, he appeals to the Supreme Court and they allow the plea and discharge him. Would that decision bind the Senators? It is submitted it would not. The same is believed to be true of any side case that could be brought.

Answer to second objection—

It is admitted the argument is not supported by any direct authority—is without precedent. But the reason for that is that no such case has ever before been known.

The object of the argument was to endeavor to make a precedent for the future, by applying to a new and interesting state of affairs, certain abstract and well established principles of Law.

There is however an approach to authority in the case named and still more, it is believed, in the case of Howard vs. Gage.—6 Mass. 462. The case is not at hand, but Curtis' Digest under the head of Mandamus says this writ is proper "Where the return to the writ will involve merely a question of law." This is understood to be the principle of the case under consideration.

It is submitted then that the want of authority or precedent, ought not to be considered, under the circumstances, a very strong argument against the proposed proceeding.

Answers to 3rd objection—

There is in fact no possibility of the government being broken up by the arrest of the Senators for disobeying the order of the Supreme Court, for if they disobey, *they* will be much more apt to arrest the Court, than the Court to arrest them. The argument then is that a Court will never issue a writ when obedience to it cannot be compelled. Is this so or ought it to be so when the question at issue is the *meaning* of the Constitution? Did not Mr. Chief Justice Taney issue a writ of Habeas Corpus, knowing obedience could not be compelled, assigning as his reason the opinion of the Chief Justice that the President could not constitutionally suspend that writ, though he had done so in fact?

Did not Mr. Chief Justice Pearson do the same in this State? If the general rule be as stated by Judge Ruffin, *can* there be no exception? Ought that fear, or even certainty, on the part of the Court, to decide them to permit a palpable and gross violation of the Constitution,

without the least effort on their part to prevent it, when applied to by a State to do so? Ought they not to take it for granted that no force would be required? That Senators, sworn to obey the Constitution (the meaning of which in *doubtful* cases it has given to the Supreme Court to decide) would submit to the interpretation of that Court, when once it is authoritatively made, and directed to them? If it is not obeyed the Senators violate their oaths, disobey the Sovereign (not the Court) and break up the Constitutional Government. The object sought by the State is the true meaning of the Constitution in the case stated. The writ issues to Senators and the return raises that question. The Supreme Court decide the meaning; their decision expresses the will of the Sovereign and that will (not any coercive power the Court may have) should secure obedience from the Senators. If it does not the Court can only refer the whole matter to the Sovereign. In military matters Commanding Generals habitually communicate orders to other Generals through Majors or Captains. The inferior officer gives the order to the Superior, but he cannot enforce obedience. His duty is done when the will of the common Superior is announced. Why could not this sound principle be applied in the interpretation of the Constitution? In the recent case of *Milligan*, Mr. Justice Davis, in delivering the opinion of the Court says—"The Constitution is a law for rulers and people, equally in war and in peace, and no doctrine involving more pernicious consequences was ever invented by the wit of man, than that any of its provisions can be suspended during the great emergencies of a government."

The Judge says a *Mandamus* should not be issued from fear of breaking up a government. Are not Senators now actually breaking up the government, if they have not already done so, by the exercise of clearly unconstitutional power? And is it a good argument at such a time, if ever, that the Supreme Court should not exercise a clearly constitutional power, the interpretation of the Constitution by issuing the only writ known, by which the case can be brought before them from the fear of breaking up the government?

Why may not the Republican Senators expel the Senators from Delaware, Maryland and Kentucky? They can expel them and no power can interfere to prevent, because the Constitution has left that question to their discretion. But having expelled them why may they not exclude those states just as they now exclude North Carolina, and so on until no State is left that does not agree with them? Is this to be the precedent for the future of the best specimen of Constitutional government ever tried?

It is presumed Judge Ruffin saw no other mode of reaching the desired object than by *Mandamus*, or he would have named it, and the mere fact of showing another remedy would have been conclusive against a *Mandamus*.

Would not Judge Ruffin approve this course? Let the State of N. C. apply for a Mandamus as proposed. If the Supreme Court will issue it—well—If the Court will not issue it, they will indicate some other remedy or they will admit there is no remedy for a gross violation of a plain Constitutional right. It is believed that neither the Court, nor Judge Ruffin would be willing to admit so serious a defect in the Constitution of the United States.

The writer of this is much gratified by the high compliment paid his other argument by Judge Ruffin and hopes this one will not neutralize the other or even diminish the Judge's favorable opinion.

From William A. Graham.

EDENTON, Feb. 22nd, 1867.

I regret, that I shall have to disappoint you, as well as the parties in the arbitration in our hands, in not meeting you on Monday next. If they attend I would be pleased, that you should receive any evidence they may have to offer and appoint another meeting, say the third week in March.

The testimony in the case of Johnston's will,¹ is to be closed tomorrow; and I fear the argument will consume two or three days of next week; so that I may not reach home till Saturday night. The propounders have failed in the presentation of the script as a holograph; and the main question is in the incorporation of the letters as part of a will anterior in date to the time of writing them, and no mention made of them in writing at the time of publication. . . .

Hon. Thos. Ruffin
&c., &c., &c.

From David L. Swain.

CHAPEL HILL, 25. Feb. 1867.

I promised some time since to shew you the enclosed letter from Genl. McClellan to Genl. Wilcox. I send with it a graceful note from President Buchanan, received a day or two ago. Please preserve and retain them until we meet.

As soon as I shall ascertain that Gov. Graham has returned from Edenton, I hope to be able to visit Hillsborough, have a conference with Mr. Cameron, Gov. G. and yourself in relation to the University and go from there to Raleigh.

Hon. Thomas Ruffin.

¹This was the famous case to determine the validity of the will of James C. Johnston of Edenton.

[ENCLOSURE]

*James Buchanan to David L. Swain.*¹

WHEATLAND, NEAR LANCASTER

14 February 1867.

My dear Sir,

I have received your favor of the 5th Instant with the Book of Mr. Spencer. I anticipate both pleasure and profit from its perusal; especially as it has been published under your sanction.

I revert, with great satisfaction, to my visit to Chapel Hill at your Commencement in 1859. Many of its agreeable incidents are still fresh in my memory. My favorable opinion of the people of the Old North State was confirmed and strengthened by my intercourse with them on that occasion. Their sound, unpretending and practical good sense, as well as devotion to the union made a deep impression upon me. Among them I met at Chapel Hill and elsewhere many accomplished, highly educated and intelligent gentlemen who would do honor to any State. I trust in God, that after your severe reverses, you may yet enjoy in the union your former peace, tranquillity and prosperity.

C. J. Ruffin well deserves all your commendations. His course in the Peace Convention was to my knowledge worthy of all praise: and I might add so was that of Governor Morehead. I regret that they were in a minority of their own Delegation.

My own health, considering my advanced age, now in my 76th, not my 77th year (as you suppose) is uncommonly good. I was born on 23 April 1791.

I shall send you by mail a copy of my Book "on the Eve of the Rebellion." You may perhaps have already seen it; but whether or not, it will be a token of the sincere regard and respect with which I shall ever remain.

Your friend

JAMES BUCHANAN.

Hon. D. L. Swain, L.L.D.

[Address:

Hon: D. L. Swain, L.L.D.

University of North Carolina,
Chapel Hill,
N. C.]

¹From the Walter Clark Manuscripts, collections of the North Carolina Historical Commission.

From Montgomery Blair.¹

Yours of the 18th inst. has come to hand for which please accept my thanks. The baubles you speak of my daughter Betty recognizes by their description to be a pair of Ear rings which she prizes very much because they were worn by her mother now deceased. If you will direct the package containing them to "Miss Blair No. 4" President's Square Washington D. C." and give it to Adams Express it will come safely.

My daughter feels under many obligations to the Revd. Mr. Patterson and to you Sir for the kindness manifested in this matter. Would to God such feelings were generally found in the hearts of our people so that they could not be made the plaything of the political managers. I have never for a minute had any malice towards the people of the South on account of the destruction of my house and property or on any other account. I have considered myself and others who have suffered or who may hereafter suffer in property and person by the discord generated in our country, the victims of that terrible trade of political intrigue which stirs up strife between brethren that the intriguers may get into power on the passions thus raised.

I have never been more depressed in feeling in relation to public affairs than at this time. I feel keenly the distress and humiliation of the brave and devoted people of the South, if they can bear with patience and fortitude the attempts now made to destroy the Govt, the Revolutionists who now control the Govt, will not only fail to dishonor the South but they will be overwhelmed by the Nation. Nothing in my opinion but an outbreak at the South can prevent the overthrow of the usurpations now dominating here, by the Nation next year.

The Scheme of Reconstruction adopted by Congress is simply a plan to carry on party domination at the expense of the plain letter of the constitution. I have no idea that this will be tolerated if it is presented to the people unaccompanied by War.

Yrs. truly

M. BLAIR.

Washn. Feby 26, 1867.

The Honorable.

Thomas Ruffin, Hillsborough, N. C.

¹Montgomery Blair, 1813-1883, a native of Kentucky, a graduate of West Point, a noted editor and lawyer, who had been postmaster-general under Lincoln from 1861 to 1864 when he retired in the interest of party harmony.

From Andrew Kevan and Brother.

PETERSBURG February 27, 1867.

Your valued favor 19th inst at hand. The President of the "Southside R. R. Co." has been constantly engaged with the Legislature in Richmond since the Annual meeting in December of the Stockholders of the Co. on matters connected with the consolidation of the Southside R.R. Co. with the other Western R. R. Co by which means would be raised to relieve his Co., etc. We understand that action concerning the Bonds of the Co. of which you hold some will probably be taken in the ✓next 30 days or sooner. Some action on the part of the City of Petersburg will thereafter be taken, unless the R. R. Co. does something to satisfy holders of the Bonds.

We shall report to you so soon as anything is done. The Guarantee by the City of Petersburg makes the Bonds ultimately good.

The Political state of affairs with us has a tendency to prevent that regularity of business by Corporations concerning indebtedness which under other circumstances would be inexcusable, but so it is—times have undergone great changes in that respect.

By the newspapers this morning we see the Legislature of this State is holding its session yesterday in Secret. Supposed to be on Federal relations concerning the late Military Bill, passed by U. S. Congress. The people are much agitated as to what *policy* should be pursued.

Cotton has greatly declined, today sales are 26 cts to 26½ cts.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT

RALEIGH Mar 3 1867.

After a conference with Gov. Graham, Vance I am confirmed in my previous impression that it is my duty again to visit Washington, to ascertain as nearly as possible our present Status and to decide, after the best lights I can obtain, what North Carolina can do, if any thing, to avert total ruin. They heartily concur in my associating you and Gov. Swain with me on the mission.

Govr. Graham thinks we should spend a day in Richmond.

I will hold myself in readiness to go at the *earliest* day you and Gov. Swain may agree upon. I shall write Govr. Swain this evening. I regret to ask of you to make this sacrifice, but feel constrained to urge your acceptance of the commission.

If preferred by you I will meet you at Hillsboro and go by the Danville road and spend the day in Richmond as we go on. I hope the time you fix may not be longer off than Thursday.

I am authorised to pay our expenses by draft on the Pub. Treasr. Please let me hear from you at the earliest practicable time.

Yours very truly

JONATHAN WORTH.

P. S. You would do well to confer with Gov. Swain, as to the time of departure, as soon as you receive this.

[Address: Hillsboro, N. C.]

From David L. Swain.

CHAPEL HILL, 6, March 1867.

A communication from Governor Worth dated 3d inst. but which did not reach me until yesterday, requests me to accompany you and him on a mission to Washington, and to concert the time of departure, which he hopes may not be later than tomorrow with you.

I have just finished a long letter in reply, concluding with the intimation, that in the present exigency I did not feel myself at liberty to decline such an association, and that so far as related to yourself I know no one who could be substituted in your place with equal hope of successful results. I have agreed therefore to meet you and him on or before Monday next either at Raleigh or Hillsborough as he may direct.

I have suggested to him moreover the propriety of addressing the President of his disposition to confer with him, and ascertain whether an interview would be acceptable. Telegrams may be exchanged in ample time for all our purposes.

I have read Mr. "Buchannans Administration on the eve of the Rebellion," with great interest. It makes an octavo of 300 pages and will serve as a remembrance of many interesting events and lost opportunities, to save a country from ruin, and especially in the instances in the Peace Congress, when Morehead and yourself and Reid and Sumner were outvoted and overruled by younger men. He presents Mr. Seward in no very enviable light for the contemplation of posterity and annihilates Gen. Scott. Gov. Floyd is still more unfortunate. No American since the days of Benedict Arnold, has achieved such infamous notoriety. I will send you the book the first favorable opportunity.

I have read the Stephens Bill with various commentaries, and the letter of Gov. Brown recommending its acceptance by the people of Georgia, but have not received the Veto Message.

To David L. Swain.¹

HILLSBOROUGH, March 15th, 1867.

My Dear Sir./

After writing to you yesterday Mr. Graham called at night and sat an hour and we talked of things in general, and, particularly, about his trip to New York and the trust reposed in him and others by Mr. Peabody, the Landscip, the University, and, most especially, the demise of that excellent, valuable and valued man, Dr. Phillips.² That sad and sudden event filled me with regret and awe, and, indeed, shocked all my sensibilities. The alumni of Chapel-hill for the last forty years, and, moreover, the whole State were greatly his debtors. From his advent among us I set a high value on him, as a man of science and worth, but for the last half of his services here that estimate was re-duplicated over and over again until it matured into the deepest respect and very profound reverence. I shall now always regret, that, while the Institution possessed the funds, I could not get enough of you trustees to join me, as were requisite to carry the motion I made over and over again, through a series of years, by a declaratory vote and a pecuniary appropriation, evincing the general sense entertained for his long, able, conscientious, useful and invaluable example and instructions to our youth. I thought his was a fit case to constitute an exemplar, universally impressive, of the publick duty of those in authority to provide for the comfortable competency of those in learned positions, engrossing all their time and talents and segregating them from personal and independent employments. A Clergyman, a Teacher, and a Judge, after acceptable service for a period, which wears them out, ought to be left to peace and quietness in their last days, and in the enjoyment of the reflection, that, after having done their duty in life, they were resting in preparation for the end, in the farther enjoyment of the common acknowledgment of their mental and scientific pre-eminence, their moral excellence and their faithful and fruitful service. Dr. Phillips was entitled to a *Scholarship* in the college, besides his salary as a Teacher; and now that we have had the last of him, I believe everybody will concur in that opinion. I wish I could have got a majority to have done so while it might have imparted repose to his anxieties and gratification to his feelings!

✓ I wish Graham may be able to get even a small share of the Peabody Treasure for Chapel-hill—tho' hardly, I fear. If he should be so fortunate, it ought to be a separate fund, especially applicable to particular purposes, and trusts, and not as an access to the general fund, controllable by the Legislature.

¹From the Swain papers, collections of the North Carolina Historical Society.

²Dr. James Phillips had recently died during the chapel exercises of the University.

I find, that, as I get older, I am apt to write more than I intended, when I began, and, at the same time, to leave unwritten half what I did intend and, often, that not the least important. Upon the subject of *the Scrip*, on which I wrote yesterday, I meant and ought to have said, that, if it should be concluded to sell and invest, as I proposed, both operations, with the view to the greatest success in each, ought to be conducted and concluded *sub rosa*, and that there ought to be as our Executive Committee is now constituted and the liabilities of the Institution exist, some understanding or arrangement on that point. I fear one or more of that Committee may be under "contrariant obligations" and not feel the strongest desire for the interest of the College. It would affect the price of our stocks, if it were known that the Trustees were making so large an investment at once. I think we might receive private proposals for the Scrip, and at the same time advertise them or put them into hands of a Land Broker in New York or the North West. Pray, see that the best is made of them and especially, that it is done quickly, while we may get the 6 pr. ct. on good terms. I believe, Graham's impressions accord with mine on both points. But each of us will readily concur in any plan more feasible.

I deplore very much the intelligence he received from you and communicated to me, of the returned afflictions to your daughter, and pray God, that He may in mercy relieve her and her friends, or else prepare them by his Grace to submit in due humility and meekness. God's Blessings be with you and yours!

Very truly, Dear Sir, Your Friend and Svt

THOMAS RUFFIN.

Can the Trustees, generally, be roused to take a due interest in the affairs of the University in its present extremity? Why if they will not personally do more, do they continue in the trust?

From Weldon N. Edwards.

POPLAR MOUNT, 15th March, 1867.

My Dear—very dear and old Friend.

Yesterday it rained and snowed alternately near all day—such has been the weather here for the last six weeks—with the intermission of only a day or so—no ploughing done and laborers too free. This morning it was very cloudy and very cold—Ther 28°. I can do nothing to day—indeed can do nothing at any time—except exercise on foot, or on Horse back to keep from rusting—so have seated myself to try to write you—a pleasure I have promised myself ever since we last

met, and of which I have been deprived by an incurable reluctance of both mind and muscle for work of any kind. I dread the undertaking even now—tho' impelled by an earnest desire to hear from you and of you. This is preface enough—it is only given as an apology for seeming neglect.

First then—You must not doubt the attributions in the address at the top of this Page. We are indeed old—very old—nearly ten years beyond the Psalmist's age. Thanks to a kind Providence for his beneficent protection and guidance thus far—and for the aptitude in temperament, which I trust we have, for bearing with patience the cruel and unmerited afflictions which have been visited upon us by a reckless, cruel and vindictive People. "My Friend! free Govt. is defunct, I fear, forever. The American theory and the Principles in which our ancestors had such strong and perdurable faith are spurned. According to these principles and this Theory the People have a right, at any time, to remodel or alter their Govt., and if the Northern People submit to the demolition of our excellent structure now almost accomplished, may the retribution—(for retribution will assuredly come,)—for the accursed revolution be on their heads alone—*our* skirts will be untainted in the eyes of the *world*. In my opinion the public sentiment of the North would not tolerate for a moment, the present invasion of constitutional liberty, if the Ballot Box were not controlled by the miserable Hirelings of foreign Birth to be found North of Mason's and Dixon's line. The immigrant aid societies and unpeopled Western lands have increased, and not diminished, as was hoped—this unbearable nuisance. Native Americans yet love the work of their Ancestors, and but for the ambition, avarice, and venality, now pulling us down, would be found rallying as a strong man to the Rescue! Depend upon it, my Friend! this is so and it may be, that within a short time only may yet be seen a terrible outbreak that will convulse the whole North. We would not, if we could—and could not, if we would, initiate such a step. Our cup of ills is full—We can bear no more. It becomes us to submit uncomplainingly, if we can, to our lot and to guard with care our words as well as our acts." But enough of this. I have tried to avoid complaint. I have indulged very slightly, if at all, a spirit of abuse. Have said nothing that either Thad: or Sumner should arrest me for. At any rate *you* will not betray me.

Now for some inquiries which I pray you to answer in your usually deliberative manner. In view of the uncertainties of the future—so full of awful Portents—tell me 1st. Are our moneys safe in N. C. and how best to secure them against all hazards? Are foreign Repositories advisable? We know not what exactions, or contributions or Tribute, may be extorted from us. Should currency be changed into Gold?

2d. Is our land safe? Would alienation *now* secure it to a friend or Relative? for a valuable consideration, I mean.

3d. When my Pardon came to hand, I forwarded an acknowledgment of its receipt (shown to a friend) to the St. Dep. but Mr. Seward has not notified me of *its Receipt*. Is this sufficient? if not, how correct it? should there be *duplicates*?

Now for a message to my excellent Friend your good daughter, Pattie, which I beg you to deliver with my kindest Regards, in yr. best manner. Say to her, I recd. her very kind letter written from Nansemond—for which I give her many, very many thanks—especially for her remembrance of me and for the information concerning yourself. That my Heart prompted an answer, but that I was deterred by the persuasion that I could not offer such a letter as she deserved or I could wish—certainly not one so “nice” as to be prized as a Memento—but that if she will accept as an attonement for my want of Gallantry—or value as a memorial the Photograph of an *old* man, I will, as soon as I see an artist have mine taken and sent to her. As soon as Mr. Ashe told me she and her sister were along I hastened to see them—but off went the cars.

My books are my companions. I read them and newspapers—but attentions is rebellious—and memory gains no increase of stores. It is for *abstraction* and knowledge, that I make this my employment.

May God bless you and yours and bestow present and future happiness on you and them is the sincere prayer of yr. mo. sincere and unalterable friend

W. N. EDWARDS.

[Address: Hillsboro N. C.]

From David L. Swain.

CHAPEL HILL, 19 March 1867.

Your letter of the 14th was delivered to me on Friday by Mr. Guthrie, that of the following day (15th) was received by yesterdays mail.

All your suggestions in relation to the propriety of an early disposition of the land scrip and the investment of the proceeds seem to me judicious. I have not hitherto moved in the matter simply because I was anxious to have a conversation with Mr. Cameron Mr. Graham and yourself previous to the meeting of the Board, and thought it prudent moreover to attract little attention to the subject until the 1st Sess. of the 40th Cong. shall come to an end and the Holden Convention of the 27th pass by. Gov. G's. unexpected delay and the continued indisposition of my daughter and other casualties have delayed my visit to Hillsboro. If he shall return in time I hope to be able to get to Hillsboro and go down with him to Wake Superior Court,

week after next. I suggested to the Public Treasurer, when last in Raleigh, that I thought the sale of the scrip and investment of the proceeds ought to be intrusted to him and that if occasion should call for it I would act as an agent under him. The General Assembly originally committed the matter to his management and he sent me to Washington to make the necessary arrangements with the President and the Secretary of the Interior to obtain the scrip.

I enclose a letter from G. F. Lewis Esq. of Cleveland O. with a copy of my reply enclosed. The correspondence will explain itself. Please retain it until we meet. I wrote to Gov. Graham by Monday's mail in relation to Mr. Green's call for an offer and requested him to avail himself of the opportunity afforded by his visit to New-York to obtain information as to the best mode of disposing. I wrote by the same mail to Gov. Allen at Freeport Illinois on the subject.

In relation to public affairs I wrote to Gov. A. that I preferred the Sherman Bill with all its complicated despotism to the Howard Amendment alone. That having served in all the departments of the State government, I was lately disfranchised, that I was not even allowed to vote for my own slaves nor they for me, though there were two of them in whose discretion and benovolence I reposed more confidence than in the Massachusetts and Penn. statesmen. 'Thou canst not say I did it' is some consolation. I suggested to Gov. Worth the propriety of conferring with the Atto. Genl. the President and Mr. Johnson of Maryland in relation to testing the constitutionality of the law, and if encouraged to do so, to invite a meeting of the governors of the several states concerned to deliberate upon the subject. That in addition to this it would be important to obtain through the intervention of the President the appointment of an able and discreet General to be placed at the head of the Division. Schofield, Sherman and Thomas I would have preferred in the order of their names.

I have great confidence that Gov. Holden will find himself in a decided minority at the opening of the military regime and at all times to come.

I regret exceedingly your inability to accompany the Governor. If you had accepted however, I might have attempted to have joined you, and as events have shewn my absence would have been most important. Dr. P. has passed away and Prof. P is still confined to his room. My daughter is *extremely* ill and Mr. S. exhausted by fatigue and watching to an extent that occasions painful apprehensions. I can not be far away for an hour.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT,
RALEIGH, Mar. 23, 1867.

It is deemed inexpedient that Congress know that any of the States will make an effort to resist by the action of the Supreme Court of the U. S., the execution of the military reconstruction bill of the 2nd March, lest they continue their Sitting or take further measures to embarrass or overthrow the Court. You will therefore speak of what follows only to Govr. Graham and other legal friends in whom you may confide.

Judge Sharkie¹ and R. J. Walker² are employed by the Govr. of Mississippi to apply, in the name of that State and such others as may choose to join in it, to the Supreme Court of the U. S., which holds an adjourned Session next month, for an Injunction against the Prest. and his military commandants, restraining them from the execution of the law on the ground of its unconstitutionality.

I have heard the bill read. On next Tuesday I shall submit to our Council of State the questions—

1. Whether the Govr. alone, or with the advice of his Council, have the right to make the State a party to such a bill?

2. Is it expedient to do so?

I have written Judge Curtis for his opinion to be submitted to my Council—and would like to have yours and Govr. Graham's.

[Address: Hillsboro, N. C.]

From Jonathan Worth.

EXECUTIVE DEPARTMENT.,
RALEIGH, Mar. 29/67.

I thank you for y^r. answer to my inquiry as to your opinion on a legal question of momentous importance to the State.

There is remarkable concurrence in the views taken by you and Judge Curtis³ on the main question submitted both as to the probable

¹William L. Sharkey, provisional governor of Mississippi.

²Robert J. Walker, 1801-1869, a native of Pennsylvania, senator from Mississippi, 1836-1845, secretary of the treasury under Polk, governor of Kansas, 1857, agent of the United States in Europe from 1863 to 1865.

³Benjamin R. Curtis, 1809-1874, associate justice of the Supreme Court of the United States from 1851 to 1857, who had bitterly opposed certain policies of the administration during the war, now a practicing lawyer in Massachusetts and opposed to Reconstruction. He is best remembered as the author of the famous dissenting opinion in the Dred Scott Case. He was prominent in the defence of President Johnson in the impeachment trial.

decision and the expediency of seeking redress through the Courts I had arrived at the same conclusion. Notwithstanding the undress in which, for want of time, you had to appear, I laid your letter unofficially, before my Council. After full deliberation the Council decided unanimously that it was inexpedient for the State to join in the proceeding. I have not deemed it proper to let it go to the public that we have had the matter under consideration. Our action officially appears on our Journal and there is nothing in it which we desire to conceal, only for the fact that Mississippi may abandon the scheme and as I was possessed of the facts with liberty only to make them known to my Council and discreet legal friends whose opinions I might desire to obtain, I have allowed the press to know only that the Council was called before the passage of the Supplemental re-construction bill to consider of the expediency of calling together the Genl. A.

I am sorry I cannot possibly find time to give you many facts and conclusions, arrived at by my visit to Richmond and Washington; as also some account of the proceedings of the Holden Convention yesterday. It consisted of a very numerous assemblage from many, if not most, of the Counties of the State, about half black and half white:—the blacks the more conservative element and their leader J. H. Harris, from all I can understand, the most intelligent, liberal and eloquent man in the body. The leaders, Settle, Dick, Holden etc, urged and the body organized under the name of the Republican party against the views of such consistent men as Hedrick, Goodloe and a few others who urged the name of the National Union party. It was probably the most radical party which has assembled in the United States—It was enthusiastic of success—formed plans of thorough organization in every County of the State and will probably be liberally supplied with money for electioneering purposes from the North. They avow their design to elect to the Convention and to Congress men who will co-operate with the majority of Congress and thus insure our re-admission into the Union and the avoiding of confiscation. Many of them avow the most proscriptive purposes against what they call the leading rebels, among whom they class all who are not adherents of Holden.

This is a most formidable combination. Each County, for itself, must adopt the best measures possible to avert the further calamities which are in store for us, I fear.

From W. F. Leak.

ROCKINGHAM, RICHMOND COUNTY [April, 1867.]

Honl. Judge Ruffin

My old and highly esteemed Friend.

I have taken the liberty of addressing you a letter; upon a subject of the *greatest* importance to me individually and if I have presumed too much upon our long acquaintance in doing so; I trust you will pardon the liberty; and ascribe it to the great pecuniary interest involved.

In 1833, the "R. M. Company" was chartered for 25 years, and expired in 1858. By *adding* the 3 years of grace for winding up, selling out etc. it would reach the last of 1861.

The Stockholders concluded in the 3 years to apply for a renewal of their charter (In truth and *in fact* it *never occur'd.* to any of them that the charter had expired,) and on the 18 of December 1862, they got their charter *renewed* for 30 years.

The *Grantor* contends that there has been a *forfeiture* of charter and claims the *whole* interest, to himself for *Life* and afterwards to his son (an only child in remainder and *threatens to bring suit* and will do so.

The *Grantor* in Jany. 1861 *sold out* his Stock or shares in the establishment but *without Seal*; his conveyance stating that he conveyed. *all* his interest embracing Lands, Buildings etc. He *now says* that at the time he sold out; the charter was *alive* and that it was the *fault of the stockholders* that they did not renew.

Now the first question is; has there been a *forfeiture*. In 1861 the *Legislative functions* of the State were *suspended* and *as such*, it was *impossible* to have obtained a new charter.

This it seems to me would be in *our favor*, unless the 3 years should be *strictly* construed, as *confined* to the *specific* purpose of *winding up* the concern, by selling out etc. If so, the charter of 18 Dec. 1862, might not avail us.

Again. *Has not* the grantor by his conveyance in Jany. 1861 *parted* with his life Estate *anyway*; and *if* a forfeiture the remainder goes to the son?

You will pardon me for saying that, *although* I know, you have long since been off the Bench, and quit *pestering* yourself with the "glorious uncertainty of the Law"; yet I know no man, in the United States, whose opinion (even now) I would as soon, confide in as yours. The interest at Stake with me is *large* as I own seven-eighths of the whole concern.

Before the War, I could have even *lost* the whole and not have *felt the loss*, but by the Yankee "raid," I have been *strippd.* of *nearly all* and If I now lose this, it will be difficult for me to support my family

in my declining years; for besides the loss of Negroes, they (the Yankees) have damaged me at least \$100,000 in *gold burning* for me some 350 Bales of cotton and taking every Horse and mule I had, on my different farms.

I have written Gov. Graham on the *same subject*, but have not heard from him.

I can *compromise* by giving the Grantor and his son the *one half* and will do so, if yourself and Gov. Graham so advise me to do, for it is better to save half, than to *lose* all.

You will *greatly* oblige me at your earliest possible convenience to advise me in the premises; and if by any means on earth, I can ever return the favor, it will be done.

With the Highest considerations

I remain Sir

yours

W. F. LEAK.

From George Patterson.

WILMINGTON N. C.

May 2nd. 1867.

Hon. Thos. Ruffin:

My dear Judge:

We do most earnestly hope that you will be present at the Diocesan Convention to be held in this City on Wednesday the 15th day of May.

Whilst here, Gen'l Ransom begs that you will be his guest.

Please come if convenient on Tuesday the 14th.

Do give my love to Mrs. Ruffin and to each member of your family.

I shall hope to visit Hillsboro some time this summer.

With great respect

I remain my dear Judge

Your most faithful friend

GEO. PATTERSON:

Asst. Min: St. James Ch.

Wilmington.

From W. F. Leak.

ROCKINGHAM May 4th/67.

Being greatly *disturbed* in mind, as to the present "Status" of the R. M. Company" I *presumed* on our acquaintance of some 50 years standing and addressed you a letter some few mails since, asking your

legal opinion in relation thereto. I *knew* that you had long since *retired* from the Bench and seldom, if ever in (your old age) *pestered* yourself with legal matters, but as I knew of no one upon whose Judgements I would as soon rely; I ventured to make the request spoken of.

Since then I have *finally* and forever *Settled* the Difficulty, by *valuing* the establishment and then giving the Grantor and Son the $\frac{1}{3}$ of its cash value.

You need therefore give yourself no further trouble and *if* I have taken *too great* a liberty; please *ascribe it to the great pecuniary interest* I had in the matter.

From W. F. Leak.

ROCKINGHAM May 15/67.

Your very kind letter in reply to my two several letters, has been recd. for which you will please accept my warmest thanks.

Indeed I *hesitated*, for some time, before I could venture to trouble you; but having such great pecuniary interest at stake, I decided to do so; for backed by your opinion; I knew, that I could not be wrong.

Like *you*; I too feel very much the debility of age and like you have been *stripped*, of $\frac{3}{4}$ of the earnings of 40 years labor; but *if* they will let the matter *stop* at what it is now at; I hope by industry and economy, to have enough; to support my aged wife and myself, and a small provision for the dependent members of my family.

I agree with you; that it is *now proved* (by the conduct of the North), that the war on *our* part was at the time *perfectly* Justifiable and in truth *unavoidable*.

We resisted, *manfully*; while we could, and I hold it to be *no disgrace*; for us now to submit to force and numbers; except it be, to those, who *willingly* pull up their coat tail to receive a *kick*.

If I were a *young* man; I would go back to England; the land of my Fathers; for at present it is the freest governmt. on earth, but, as it is, I shall remain, where I am, and be a peaceful and law abiding citizen the few remnants of my allotted day.

Indeed, I *feel*; as if I had *no country*, but was merely a ship-wrecked mariner, subjected to be tossed about by the wind and waves.

But enough of this, please give my respects, to your Bro James Ruffin and say to him that more than 3 months since, I wrote to him inclosing a piece of poetry "*the Days of my youth*" since which I have not heard from him; and tell him, *if* I thought he rec^d my letter I have cause to think *hard of him*, for not replying; but I *hope* he did not get it.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT
RALEIGH May 24th 1867.

The President has accepted the invitation, of the Mayor and Council of this City, to be present, on the 4th proximo, at the laying of the foundation of a monument in honor of his father; and, also, an invitation from me, as President, ex-officio, of the Trustees of the University, to attend the exercises at Chapel Hill, on the 6th proximo.

It seems to me to be fit and proper that a few of the men, whom North Carolina has heretofore honored, should be here on the 4th, and accompany the President on the 5th to Chapel Hill. I have invited Genl. Sickles, Judges of the Supreme Court, the ex-Governors of the State, to be present on both occasions. I hope you will find it convenient and agreeable to you to join in this demonstration of respect to an illustrious native of the State.

[Address: Hillsboro, N. C.]

From David L. Swain.

CHAPEL HILL, 2 June, 1867.

The President will be our guest at Commencement and in the hope that you will be able to come down, I will have very comfortable rooms set apart for you and Gov. Worth in the Retreat which is about half way between my house and the college. I will expect both of you to dine with the President on Commencement day.

You must endeavor to come since I have provided for you the best rooms and the best company in the place. Kind and respectful as you know me to feel toward you you are not to suppose, that I am entirely devoid of selfishness. I wish to have you in *juxta position* to the President so that the bond scrip may, incidentally, become a topic for conversation.

Please bring Mr. Buchanan's book and letter and Genl. McClellan's letter down with you.

C[hief] J[ustice] Ruffin

Genl. Sickles will be the guest of Dr. Hubbard. I do not at present expect to have any company except the President and *suit*, Gov. Worth and yourself.

From Jonathan Worth.

STATE OF NORTH CAROLINA
EXECUTIVE DEPARTMENT
RALEIGH JUNE 14, 1867.

I showed your letter of the 3d explaining the cause of your failure to join in the cortege in honor of the Prest. to him and also to Gov. Seward. Each of them admired its tone and sentiments. The Prest. who seems sad and taciturn, remarked that it was an admirable letter, and that it ought to be preserved. I think its publication might do good? Will you allow me to have it published?

With sincere hope that your health may be improved and that you may be allowed to live to see something like Civil Liberty restored to our unhappy people.

[Address: Hillsboro, N. C.]

From J. L. Morehead.

CHARLOTTE N. C.
June 19th 1867.

Allen had a small book of entries and some estimates which I suppose he intended as evidence; if so, he should have left them with Gov. Graham or yourself before leaving Hillsboro'. I left all my papers and supposed, of course, he would do so. He took them to the Hotel with him and told me he would start home early the next morning. So if Gov. Graham got them at all, it must have been after I left. Now if these papers are to be part of his evidence I object to his taking them back to Newbern with him. They should be in the possession of the arbitrators, for, otherwise, other entries and other papers might be added, which of course would not do, as the evidence is all closed except as to the particular item 39.

Will you please ask Gov. Graham if Allen left the papers with him. If he did not and you gentlemen intend to receive them in evidence then you should telegraph him *at once* to return them to you, otherwise if you receive them ten or twelve days hence you cannot tell whether there have been more entries made or more papers added. You know you were so particular with me—which was all right and proper—that you would not let me even take from your house any paper which was submitted in evidence only during the time we were hearing more evidence. Now by the same rule, and that too *after the case is closed*, the R'l R'd Co. certainly should not have the papers intended as evidence but they should be in the possession of the Arbitrators.

From J. L. Morehead.

OFFICE NORTH CAROLINA R. R. Co.,
COMPANY SHOPS. N. C.,
Aug. 16th, 1867.

How comes on the arbitration?

I hope you have about completed it as I heard from Gov. Graham some weeks since that you were nearly thro.

Trusting that you have not found much difficulty in making out the award and with my best wishes for the health of yourself and family.

From J. L. Morehead.

CHARLOTTE N. C.
Aug. 27th 1867.

Yours of 16th was duly rec'd and it gave me much pleasure to know that the R'l. R'd. matter was brought to a close. I sent to the cl'k at Greensboro' for a copy of the award but have not yet rec'd it. I have just returned from Morehead where I have been for the past week and while there attended the meeting of the Board of Directors but Whitford had not rec'd a copy from the clerk.

I shall cheerfully obey your admonition to "utter no note of triumph over our adversaries" for when I went into the arbitration I did it with the fullest confidence in the arbitrators and determined to be satisfied with their award, whatever that might be, after their investigation of the case. Though never doubting the result, I am gratified that, in a case so long and persistently contested on the part of the R'l R'd Co., Father's claims should come out triumphant. I must thank you both and especially you, in your feeble state of health for your very patient investigation of so complicated and troublesome a case and have no doubt you "have arrived as nearly at right and justice as would be attained by any person under the circumstances."

This is the anniversary, my dear Judge, of the saddest day of my life save one (the 12th of May last when I lost my dearest earthly companion, the treasure of my heart).

One year ago today, my venerated Father closed his eyes in death. How I loved him and adored him no one can conceive unless they have been through a similar trial, for when death shuts the door between us, the full reality of our loss comes over us with its crushing weight. There is not a day not an hour that he is not in my mind. With the accumulated troubles and cares of the last twelve months upon my shoulders I feel ten years older. Sister Lizzie sends her best love to your household.

From Julius A. Gray.

GREENSBORO' Oct. 27. 1867.

The award made up by yourself and Gov: Graham, was on yesterday entered as the Judgment of the Court, without opposition on the part of the Rail Road Company. We have, as yet, made no arrangement with the Comp'y. for the payment of the debt.

John informs me, that at the last meeting of the Directory the matter was discussed and Mr. Whitford was authorized to confer with him, with a view to a settlement, but with *his usual promptness*, did not say one word about it.

John also urged him to forward, without delay, the amount due yourself and Gov. Graham.

I have heard Gov: Morehead say, that he thought the Company owed him about Eighty Thousand (80.000.) Dollars—Though he could not tell exactly how much, as he had not made an accurate calculation of the items in his account. We hardly hoped to be able to recover so much, as we were ignorant of many facts connected with it, and were not well informed as to the evidence upon which the Governor relied to sustain many of his claims. But I speak not only my own sentiments, but those of the whole family, when I assure you that the award is entirely satisfactory to us, and we consider ourselves under lasting obligations to you for the disinterested zeal with which you have prosecuted this arduous and complicated business.

* * * * *

From William Brown.

PETERSBURG

Dec. 23rd 1867.

I have waited to write to you, according to my promise, on the subject of the Southside R. R. Bonds until I could find out whether or not any speedy action would be taken with regard to them.

The stockholders meeting, on Dec. 4th, had the matter of the deal of the Co. brought very prominently before it, but nothing definite was done, nor will any action be had for at least six months to come. The road has been practically consolidated with the Va. and Tenn, and the Norfolk and Petersburg RRs. by the election of a common President—and great increase of receipts is anticipated, should this expecta-

tion be realized there is strong probability that the back interest will be funded and the road will begin to pay interest some time within the next year.

I shall be very glad to furnish you at any time with any further information you may desire in the matter.

To Judge Ruffin,
N. C.

From J. L. Morehead.

CHARLOTTE N. C.,
Dec 24th 1867.

Yours of the 18th is received. At the Fall Term of Guilford Sup. Court we obtained a judgment against the A. and N. C. R. R. for the am't of the award and executions were issued to the Sheriff of Craven County. On the 7th Nov there was a called meeting of the stockholders of the R. R. to authorize the borrowing of an amount not to exceed \$200,000, which is to be done by issuing bonds secured by mortgage on the property of the Co. Whitford left for New York soon afterwards and I have heard nothing from him, since. Our regular meeting takes place on Thursday next, 26th when if he has returned he will make his report. My own impression is they will endeavor to shake off payment of this judgment as long as they can.

I endeavored for two months to get Whitford to agree and let us have, some concert of action in paying you and Gov Graham but in this as in every thing else I could get no satisfaction from him, consequently I concluded to send my part and wait on him no longer.

I will endeavor at our next meeting to have this payment arranged, tho the R. R. has not had money enough in the Treasury I expect, at any one time to pay it.

I am afraid he will have a rough time raising money in New York. If he succeeds however you and Gov Graham will be paid at once.

I will most cheerfully give the matter my attention.

If the meeting takes place on Thursday I will write you again on my return home and hope to be able to say something definite to you.

I am greatly gratified to hear of Col. Ruffin's improved health and hope it may continue to perfect restoration.

* * * * *

*From William H. Bailey.*¹

SALISBURY Jany. 3d. 68.

Hon Thomas Ruffin

My Dear Sir

Your highly prized favor of the 1st inst. came duly to hand and it affords me pleasure to say that after reading it and some further consideration and study, the clouds broke and I think I now understand the matter. My original difficulty arose perhaps from two causes 1st I wanted an injunction restraining the admn. from paying voluntarily which the late Act of Assembly allows and 2d I have very seldom used the charging part in the bills I have been required to draw. The quantum of assets is or is presumed to be a matter peculiarly within the knowledge of the Admn, and therefore is not stated in the English forms, but a pretense of lack of assets is stated and a charge to the contrary in general terms which put the fact of assets in issue and by interrogatory pointed to the charge the Admn is, either compelled to admit assets or the plaintiff is entitled upon denial to have the matter thus put in issue tried. It seems that Mr. Curtis in his precedents did not fully comprehend the distinction I have mentioned and puts the amount of assets in the stating part of the bill. Mr. Moore whom I esteem as an equity lawyer of the first water, has a like precedent. I am not aware of any reported decision involving the [illegible word] of creditors bills, though the subject is touched upon argued in *Sumners v. Whitakers* 2 Md. Eq. 129. I recollect that such a bill had been filed by Mr. Tanner against old Dr. Smith in Orange many years ago and a decree obtained in the Supreme Court but it seems that the case was never reported. Allow me again to say that no consideration would have induced me to break that repose from legal investigations which you have justly earned by a long, useful and splendid judicial career, but a certain conviction that since the death of Chancellor Welworth, you alone in the United States could throw light upon the matter. Permit me to say here what I have often said to others and in the sincerest manner that I regard you as the *Ld. Coke* in common law, the *Lord Stowell* on civil law, and the *Lord Eldon* in Equity of America, and permit me also to hope that you may long live enjoying in dignified retirement the fame you have so justly earned. The profession of the law owes you a debt of gratitude which is too great to be paid in this generation and which alone posterity can discharge. Reciprocating your kindly feelings and thanking you most heartily for your letter, I remain

With great respect

Yr. obt. svt.

W. H. BAILEY.

¹A prominent lawyer of Salisbury.

From J. L. Morehead.

CHARLOTTE N. C.

Jan. 4th, 1868.

Your letter directed to Newbern did not reach me there but was forwarded to me here.

Whitford thinks he can raise some money during the present month when I hope you and Gov. Graham will be paid.

I mentioned in the presence of the Board that I had paid my part of the expenses of the arbitration, and I thought the Bo. should take some steps towards paying theirs, as soon as the money could be raised to do so.

Whitford thinks he can sell the bonds in New York at 80/85. If not there it is proposed to borrow money on them by hypothecation. There will only be \$200,000 of bonds issued.

I rather think the disposition of some of the directors about Newbern is to put off the payment of my judgment as long as they can under stay laws or military orders.

The sheriff of Craven has the execution but has not levied yet. The executions were only issued to Craven County for the present. I have been considering the propriety of taking the bonds but have not as yet arrived at a definite conclusion.

I am very much obliged for the suggestions contained in your letter and for the letter itself, for I am always glad to hear from you.

You may rest assured that I will keep an eye to your interest and will have the money paid both to you and the Gov. as soon as my influence can bring about such a result.

I hope your cough has improved and with this pleasant weather it may not trouble you as much as you anticipate. I forgot to mention that the mortgage of the R'd is for only \$200,000—bonds 8 pr ct. 20 years.

From W. F. Leak.

ROCKINGHAM Jan'y 20th/68.

Allow me to say; without any the least flattery; that there is no man in No. Carolina, in whose opinions; upon questions merely political, I would as soon confide, as yours; and it is for that purpose, I have taken the liberty, to advise with you, upon the present deplorable situation of the Southern States and to ask your opinion as to *the best* course to pursue, in the approaching struggle now coming on, for what is calld "Manhood Suffrage."

I much fear, that "organize" as we may and resist as much as we can, that the constitution *now* preparing, by the Negro Convention in session, will be forced upon us.

I need not say to you that I am opposed to it; or to anything like it which goes any further in securing to the Negro the rights of person and of property, with a *qualified* right, which looks to morals and intelligence.

Political rights in a great degree like *social* position, should never be conferrd. but should be *earned*; leaving to the Negro as well as to others to take that position which his character and intelligence assign him.

We have been tolerably distinctly assured that unless we do this, we are to remain in our present degraded position.

For one I had rather be excluded from congressional representation for ever, than *voluntarily* to submit to any such terms.

It may be *forced* upon us, and in this no *degradation* attaches, for a man may be even *kickd.*, when overpowerd. and yet preserve his *Honor*; but to *pull up your own coat tail*, to receive the Blow, degrades one forever—which I never will do.

The question then is what under the circumstances, surrounding us, is it best for us to do?

Whether to "organize" and try and reject the Negro Constitution, or to become miserable spectators, doing nothing more than to give a silent vote against it.

If I was 30 years younger, I would take my family to England, at present the freest government upon earth and the only kind of a government; that can possibly stand up against the Bad passions of men.

"Of this I am now convinced and for one give up, that a "Democracy" has and always will prove a failure.

It is worse than *folly*, to tell those in power that the federal government should be confined solely to things *without*, leaving to the States those *within*, yes, they even control the *agriculture* of the Country, which proposition was *distinctly* submitted to the convention and *you* know, was *distinctly* rejected by it."

I should be more than pleased at your leisure to get your views.

I am fully aware that, at your age, writing is somewhat of a task, yet as the subject is one of great importance and I am at a loss to know, what course to take, I have presumed upon an acquaintance of some 50 years to ask it.

From James H. Ruffin.

DEMPOLIS, [ALA.] January 29th 1868.

I have been now, nearly three months from North Carolina, and have not heard one single word directly from any member of the

family. Not *one* has condescended to write me a line of intelligence as to the health or other condition of the connexions, though I write occasionally and make advances towards a correspondence. Hitherto these have drawn no response. I am not conscious of having given offence to any of them and do not feel that I have justly merited this slight, and apparently *marked* neglect. It bears hardly and I must be an anomaly in nature if I did not feel it and feel it acutely. It does seem to me that among so many nephews and nieces whom I have in No. Ca. *one* might be found who would spare so much time from other avocations as to let me know how things were going on with you all, how political matters were progressing in your region, but above all what was *the health of yourself, your wife, and your household*. On all these matters, I am most profoundly ignorant, not having had a letter or even a newspaper from your State, since I left on the 8th November last. I do not even know whether "Tom" has removed to Greensboro, as seemed to be his resolve last fall, he and his being absolutely silent towards me since my departure from No. Ca. though I have written to themselves and others in Graham about matters in which I felt some interest in that region. In a word, I seem to have been completely ostracised and deemed unworthy (*as having the plague*) of intercourse or association with relatives and old friends. I hope and trust that *you* are not *in the combination* and that I shall have *some kind of response* to this missive and that you will enlighten me as to the health of yourself, my sister, the rest of your household, and its numberless ramifications in and about Hillsborough. I am restive and uneasy under this absolute reticence and, unless it is broken, shall be positive and unalterable in my resolve to break off all intercourse between family connexions and former friends. If I were conscious of any failure of affection, or any error in morals or social intercourse, that defect would make me quiescent under such neglect, and I should bow to the decree which seems to be universal; but having *mens conscia recti*, I am extremely impatient under the interdict and would gladly have it dissolved. I hope a speedy answer from yourself will have that effect.

I could tell you something about the state of agricultural labor in this region, but have not space or time to write about it. Let it suffice to say that it is very much disorganized. No regular price is paid for it, some offering more, some less; the consequence is that the blacks are all at sea, restless, uneasy, unwilling to make contracts for fear they make a bad one or that others may make a better, planters underbidding and undermining, cotton fluctuating in rise and fall, those who sold early dissatisfied that they did not get the highest price of the season, those who have held on, still undetermined to sell in hopes of a higher value, though one would think that those who sold formerly at 5c 8c would now jump at 28c 29c. Upon the whole things are unsettled in this region and all is uncertain when they will become

quiet. But few have money and all are more or less in debt. There is, however, great recuperative power in this country and with a fair chance, they will come out at last.

I have the pleasure to tell you, that the representative of Dr. Ashe, who was thought to be insolvent informs me that the estate will pay a good dividend. I am glad to know it is, if reports be true. I shall share but little of my No. Ca. Stocks, as the State failed to pay her January coupons. If I don't get my coupons this year, I shall have to go into the poor-house, and, as I shall be the first representative of the family in such an asylum, the reflection of such a destiny is rather revolting.

When I left your house, you were anticipating a visit from "Jinny." Did she come and how was she and all her brood? Were they cooled down by the necessities of the times, or the same boistrous high-tempered chaps as upon their first visit since *the war*? Is "Sally Gwynn" still with you, or has she again tried "Chuckatuck"? We have arrived at an age when quiet and repose are essential to our comfort and ease, and when the presence of noisy turbulent boisterous brats, though very pleasant in proper times and places, can well be dispensed with as an every-day ordinary occurrence. I hope, you have not been much annoyed during this winter by the presence of *untimely* visitors and noisy children, *only one of whom is at times a great nuisance to me*. Upon the whole I trust you had a Merry Xmas, a happy New Year, and an agreeable winter thus far. May you have many of them and live long to be the stay of your family, the friend and counsel of your connexions, the oracle of your friends upon matters connected with private affairs and private interest.

As I said in the former part of this letter, I have not heard *one* word from "Tom" or his wife though I have written since my arrival here. I do not know whether I have offended him or her; if either I am unconscious of being derelict. I do not know whether he is still a resident of Graham or has removed to Greensboro' as seemed to be his purpose when I left N. Ca. I had some plans as to the disposition of my effects left in his house upon my departure, which I expressed to him, and I cannot but think, it would cost him no great expense of time or labor to let me know whether they have been executed. It seems that I must look to others for this information and accordingly after waiting for it from him, in some impatience, I have applied to a friend for such intelligence. I hope to receive it soon, when my anxiety will cease, if the information be favorable.

We are all well at present, in this family. On yesterday, however, we had an episode of sickness, which has resulted in the entire expulsion of the unwelcome little visitor. "Little Agnes,"—who is as playful as a kitten, and undergoes, every morning, a series of *teazing* annoyances from her father, had the misfortune, (or good fortune?) in her antics, to *poke her finger* into the eye of the former, which caused

great pain, for a time, and reduced him to the necessity, (in the absence of professional employment elsewhere) to exercise his skill upon his own ailment. Accordingly he resorted to the use of "*Morphine and Seidlitz powders*," (to the uninitiated a singular remedy for inflamed optics) which kept him nauseated and *in motion*, for the ensuing twelve hours. To outsiders, it is strange and queer, but this morning he awoke with all inflammation gone, his unpleasant symptoms removed, and himself and his wife ignorant as to which eye had ever been the seat of this pain and inflammation. Now I would not have you suspect that all this disturbance arose from excess in *imbibing* because it all took place in "Anns" chamber before the household were well astir, and he and his wife have lived so long under Mr. Strudwick's influence (who is filled with imaginary distempers), that they absolutely do not know, when *they are sick* and surrender themselves to all sorts of fanciful diseases in their own case as well as their baby's. For myself, I never was in better health and have had not a finger-ache since I came to this Country. I weigh within a fraction of 200 lbs., eat well, sleep well, and walk when the weather permits, from one to two miles every day. I think I shall stay here till warm weather and mosquitoes drive me off and after that all is uncertainty. I know not where to find my resting place. Quiet and repose are the great points with me; no children, no boisterous, turbulent, half grown, 8 to 14 year old *tow-heads* in the propective, before whom a lunatic asylum would be preferred. All is in the future.

You will excuse all the foregoing nonsense. I write principally, to draw information as to *your own health, my sister's* and the rest of you. I hope not to have to wait long, and shall count the days for an answer.

*From William Mahone.*¹

PETERSBURG, VA.
27, Febr'y., 1868.

Thos. Ruffin Esqr.
Hillsboro, N. C.
Dear Sir.

I am very much obliged for your letter of 22nd inst.

I need not say I trust that it has been a matter of very deep regret with the present administration of the South Side Rail Road Co: that the payment of interest upon its Bonds could not before now have been resumed.

¹William Mahone, 1827-1895, a civil engineer and railroad builder who rose to the rank of major-general in the Confederate service. He was the leader in the "Readjuster" movement in Virginia and was a member of the United States Senate from 1881 to 1887.

We have had a most earnest solicitude in the matter, and we do not mean to fail of any effort to secure that result. When we undertook the management of the company in December 1865, the road had not yet been in fact reopened then since the war, during which period not only the road bed, but its machinery, and every species of property had most materially run down, indeed they were quite worn out. The credit of the company had been almost entirely destroyed, and its obligations in the shape of a floating debt, independent of past due interest, amounted to over \$150,000.00. In this condition of things, it was not in the power of the company to pay interest, and I am not doubtful of the opinion that the entire property under auctioneer's hammer would not in that day have done more than satisfied the company's indebtedness by mortgage to the Commonwealth of Virginia. Our first object was to restore its credit, improve the condition of the road, and enlarge its capacity for business, and in this direction we have found it even difficult to derive from our revenue a sufficiency above absolute expenses to accomplish as much as really ought to be done:—while we feel there is to be found in the present important physical and pecuniary condition of the Road, much to justify an increased confidence in the ultimate value of its securities. It would be as the shadow, without substance, to undertake the payment of interest at the sacrifice of property, upon which the value of principal absolutely depends.

The country immediately along the line of our Rail Road, is yet prostrate and therefore has been unable to afford the amount of business which we must sooner or later expect to derive from that quarter, and we have been fortunate to secure from a transit or through business, in the mean while, a support.

This manner of our business is daily increasing, and in my opinion may be enlarged to an unlimited extent. Our misfortune has been that we have not had the capacity to accommodate in fact, as much as we could obtain. The present management of the Road has been anxious, and has sought to obtain such a manner of co-operation at the hands of the representatives of our City of Petersburg, as would enable us to propose some plan to our Bondholders, for the retirement of past due interest, and with confidence indicate a day, when current interest might be resumed upon all of the Bonds of the Company, but I regret to say without success.

The company will not be able in our opinion to pay its past due interest in money. We must fund this in other Bonds, and if this can be done upon satisfactory terms with our creditors of this description, I believe the payment of interest may be resumed as early as July, 1869.

In respect to Bonds that have fallen due I cannot see but that the company will have to ask an extension of time for the payment of principal, by the attachment of a new coupon sheet for such period as

may be agreed upon, or by an exchange of Bonds, for these to be issued under a new mortgage. We have heretofore invited a conference with our Bondholders,—I am sorry to say without being able to obtain such an attendance as was necessary for action,—in the hope of being able to arrange with them some plan which would satisfy their claims for the present, and make good the Co^{'s}. promises for the future. I would be greatly obliged if you would confer with such bondholders as may be within your reach, and give me the benefit of the views entertained.

I am confident that with the aid of an indulgent co-operation on their part, the property can yet be fully restored—the value of its Bonds enhanced, and ultimately made good.

Respy.,

WM. MAHONE.

From W. F. Leak.

ROCKINGHAM Feby 29th./68.

Your kind and highly valued favor of the 24th inst has been rec'd; and having now leisure, I at once reply. I have read your letter with much pleasure and most cordially agree with you, in the views you have express^d. and feel myself called upon, to do *all* I can to thwart the Negro Convention and the way to do it, (is that pointed out by you), to meet them at *the polls and out vote them*; for the case of Alabama clearly proves this to be the best and only way for us to act.

I hope the *white* men of the State, will soon be sufficiently aroused, and *united* so as to be able, (in all matters affecting their rights) to control the political affairs of the State.

If our people are not *now* aroused to a proper sense of their situation; *nothing* in the future can arouse them; no *degradation*, however humiliating can possibly awake them up;

What the present "Imbroglia" will end in, the Lord only knows; I hope for the best, but have serious fears, that it *may* end in a Civil War, and if so, the late war, with all its atrocities is not to be compared to it; for you know a "civil war" of all others, is the most cruel and bloody, for each party will know the concealed places of the other and *hunt* them up, even with Blood Hounds.

May the Good Lord, in his mercy, deliver the country from such a catastrophe;

You wish to hear from me as to *our* prospects in Richmond County and we have expressed the fears that certain *would be* conspicuous characters (close around me) would exert their utmost in behalf of the Negro.

You are right, for I assure you, that but for such Demagogues as Genl. Dockery and his son, that all things would go right in Richmond; but as it is; I have my serious fears that we shall be out voted in this county.

The Individuals refer^d to, have got the masses to believe that they are the *poor* mans friend and the Negroes friend, and with *this* belief their influence is to be dreaded.

Col. W. L. Steele has girded on his armor for the fight and upon invitation spoke to a large and crowded House in Wilmington, on last Wednesday night; the Col. is spoken of as *our* candidate for Lt. Govr. with Vance as Govr.

I think that Vance, should be united upon at once; for although not to be compared with Gov. Graham as a statesman; yet from his fund of *anecdotes* and his "ad captandum" appeals he would *catch* many, who would not vote for Graham; whereas *every* man, who would vote for Graham, would vote for Vance.

If such speakers as Vance and Col. Steele cannot arouse the people, nothing could.

I should be pleased at any time to hear from you.

*From William N. Patterson.*¹

ORANGE COUNTY
March 15, 1868.

There is no living man who has served the people of North Carolina so long and so faithfully as yourself.

I am persuaded that there is no one from whom the people would in this trying time more readily hear council and receive instruction. May I ask it as perhaps the last and certainly the most important service you can render your Country to give me the reasons why the people should not ratify the Constitution, and I will have the same published for the consideration of the people.

From W. F. Leak.

ROCKINGHAM, RICHM^d COUNTY
March 17-/68

Your highly valued favor of the 25 ult, has been rec^d. and read with much pleasure.

I agree with you, that it becomes the Bounden duty of all white men, to unite all their energies and try and defeat the adoption of

¹A farmer and much-trusted citizen of Orange County.

✓ the Bastard Constitution, which is now sought to be imposed upon them; even though by rejecting we should still remain under a Military Despotism, which I hold is much to be prefer^d. to *Negro Domination*.

For my part, I can not possibly conceive of any state of things more deplorable, or more *galling*, than for those who have been born free and hitherto bred free. to be *in subjection*, to the stupid and ferocious black. I say give *me military* rule, (even though it be without law *forever*), rather than such a state of things. Yes central africa would not be compared to it, for all its atrocities; for in central africa, they were *always* free and had not, the prejudice of *color* to stimulate their revengefull barbarity.

With you I look with great *hope* to the coming autumn Elections in the North and cannot but think, that the Democratic party may be successful, but if otherwise, farewell to freedom, comfort and life, unless we can by a war of extermination, *root out* the Tares and Enemy sowed among the wheat, and which were suffer^d, to *germinate and grow*, from *our* not being sensitively alive to our truest interest.

By all means let us *unite* and reject the Negro Constitution.

I much regret, that Gov. Vance has declined the nomination for with *him* I look^d. upon success as almost certain.

Next to him Gov. Graham should have been nominated; the present Nominee, Mr. Boyden has no individual popularity, has little or no speaking abilities, besides which his antecedents are not such as take well.

Col. Steele, should have rec^d. the nomination if Gov Graham declined it, the Colonel is in every respect, suitable, for he has fine health, few better speakers and would rally around him, much *enthusiasm*. There is *one thing*, that should be much dwelt on by the canvassers of the State, viz, The Negroes have a *wide spread* impression that the continuance of their freedom *alone* depends upon the *ascendancy* of the Radical party.

They should be informed better by our speakers and *assured* that they need have no fears that the Democratic party, will ever attempt again, to reduce them to Bondage; Yes let them be told that *their freedom* is a *fix^d*. fact and cannot and will not, ever be attempted to be changed.

Assured of this, it will lessen their opposition and make them *less apt* to attend the polls.

I should be pleased, at any time you have health and leisure to receive a letter from you.

From George W. Mordecai to Wm. K. Ruffin.

RALEIGH 18 Mar. 1868.

Wm. K. Ruffin Esqr.

My dear Sir.

I this morning recd. yours of 17th Inst. with its accompanying documents which I immediately dispatched to Genl. Miles the Asst. Comr. of Bureaus, who happened to be in town. I would have presented in person but for two reasons, one that I have a lame foot and could not walk so far; and had no conveyance at hand—the other that from my want of intercourse and acquaintance with all of the officers here I thought a personal application from me might prejudice instead of benefitting your application. I hope Genl. M. will attend to the matter immediately and send his orders to Greensboro' but for fear of its being delayed I enclose you his address with endorsment of his adjutant that you may know how to communicate with him if it should become necessary.

I am glad to hear that your father is improving. I hope the fine weather we are now having will soon set him up again.

With kind regards to him and all your household

I am very trully

Your friend

GEO. W. MORDECAI

[Enclosed]

Genl. N. A. Miles

Asst. Comr. Bu. R.F. and A.I.

Raleigh

N. C.

[Endorsed: Rec^d

Churr A. A. A. Gen.]

From Jacob F. Cline to W. K. Ruffin.

BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,
HEADQUARTERS ASSISTANT COMMISSIONER

STATE OF NORTH CAROLINA,

RALEIGH, N. C. 19th March 1868.

L.622—

W. K. Ruffin, Esq.

Hillsboro, N. C.

Sir:

I am directed by the Asst. Commissioner to acknowledge the receipt of your letter of 17th inst. enclosing letter of Mr. Abbott, and copy of contract.

After carefully examining the contract no authority is found to justify Mr. *Abbott* in retaining the crop of last year until the middle of March of this year, but should have delivered one third of the corn and grain to the labourers after deducting the value of meat and grain advanced to them during the year.

It is the duty of Bureau Agents to see that the Freedmen get their just dues with as little delay as possible, as their means of support is very limited and if they are not repaid promptly for their labor their families must either suffer or be supported by the government.

This contract is considered objectionable and no Bureau officer would be justified in approving such contract: The price of labor is even below the price paid for slave labor before the war, and in charging the laborer 50c per day for time lost, what wages are received at \$3.50 per month without board, is considered unjust, as the contract is in the form of a partnership and the loss mutual or in the ratio as 1 to 2. Contracts of this nature when the land-owner undertakes to control the personal liberty of the laborers, are utterly foreign to free institutions.

By this contract the colored laborers virtually bind themselves not to attend public worship on Sunday, visit a sick person or relative off the plantation at any time during the year even tho' it be done at times when it would be impracticable to work, without first consulting the owner, and in violation of this he is discharged with the simple pay of \$3.50 per month for his labor which is not the price of the cheapest board.

I am Sir,
Very respectfully
Your obt. svt.

JACOB F. CLINE
Actg. Asst. Ad't. Gen'l.

From J. L. Morehead.

CHARLOTTE N. C.
March 24/68

I regret to say that I can find only one copy of Judge Kerr's address about my house which I have preserved with some other papers to have published in pamphlet form—which pamphlet it will afford me much pleasure to forward to you.

My mother has written to me to be in Greensboro on Saturday next when she expects to have a family reunion, when our whole family will meet once more around the old hearthstone. It is useless to say to you, my Dear Judge, that the vacant chairs on that occasion will

bring to the eyes of us all the bitterest tears of anguish, at the same time it is a great consolation to us all to know that so many of us have been spared to comfort and cheer our dear old Mother in this her day of trial and affliction. May she live to see many more returns of the happy occasion, for confined as she is almost entirely to the house, it is indeed to her a most happy occasion.

It is likely I can procure a copy of Judge Keer's address in G.—if so I will send it to you, tho' he says it is full of errors as printed and he wishes to correct it before it is reprinted.

I am gratified to hear the fish was so acceptable for it certainly gave me more pleasure to give than to receive it. It was a Rock and one of the first of the season.

As to what Whitford has done, I have heard nothing directly from him but have learned from others that he made arrangements to borrow about \$30,000., I understood, from the Metropolitan Bank and had left the Bonds in the Bk. for sale—whether he hypothecated them or not I could not learn but suppose he did, as it was only a temporary loan. He has returned from New York but has not yet called the Board together. He is in *Charleston* now. He has never made a proposition to me in regard to my claims and I suppose does not intend any of this money for me, for he remarked in the last meeting of the Board that there was no *absolute necessity* for raising at that time more than about \$30,000.

I am extremely sorry that Maj. Graham did not except corporations and especially Rl. Rd. corporations from the benefit of his relief measure. They were excepted in Rodman's bill. There is no necessity for giving R'l. R'ds relief but they will all take advantage of it. I hope however the whole legislation of the convention will be defeated by the people—they are greatly aroused against it here. . . .

From R. M. Abbott.

March 25th 1868.

Mr. Ruffin Dear Sir I was glad to receive your letter as I had suffered some suspense on account of that Hillbrands threats I expect he got the order from the Agent in time to stop his progic or he mite of been two drunk all the week to navagate. When I met him at our court I thought wee had settled the matter until the tobacco was sold but he was drunk all the time at court, as a dog and I dont no that he reckerlect of ever seeing me thay cant force me to sell my tobacco until I get reddy unless thay disregard my contract which I I dont think they will do unless thay are drunk—tho I am going to get

it in market as soon as I can get it prised. I shall start of 4 H Ha. this week Mr. Williams wrote to me not long since and stated that the sooner I get such a crop as mine in market the better it would be for me. I had written to him on the subject. You wanted to no if the negroes ware liveing with me that reported me thay are not. there is 4 of them 3 of them left me in the fall when there time was out and one I drove off Christmas eve for stealing. I gave each of them when thay left me as much corn and wheat as I thought I would be safe in doing, taking in consideration the low prices of tobacco.

I Will send you 25 bushels of wheat the first day the land is two wet to plough.

My wheat is looking very fine my hands are working very well. I have driven off 2 since Christmas for neglect of business and what is left no very well thay have got to work and act slave fashion or thay cant stay with me. I have got as many hands as I want I am glad to here that your helth is improving I hope to see you up here soon and I am allso happy to inform you that my helth is near about fully restode I do about as much labor as I ever did but it is more fatiguing to me than it formerly was did Williams get his tobacco

Your friend and humble servant

R. M. ABBOTT.

From John D. Whitford.

NEW BERN April 19th, 1868.

Your letter, in reference to serving notice of Execution against the Atlantic and No. Ca. R. Road Company etc. is recd. and would have been acknowledged, ere this, but for my absence. It will give me pleasure to lay it before our Board of Directors, when they again meet. They regret any delay relative to the payment of yourself and Gov. Graham, though, I believe it has been understood by them that they were to pay Gov. Graham and Mr. Morehead you. However, that is, I imagine immaterial to them and as soon they can sell their bonds which we contemplate doing ere long, they will liquidate all their debts of every description.

[Address: Hillsboro, N. C.]

From J. L. Morehead.

CHARLOTTE, N. C.

April 20th 1868.

We have had under consideration the propriety of taking bonds in satisfaction of our judgment against the A. and N. C. R.R. In my conversation with you on the subject, some allusion was made to the

question of usury in taking bonds at a price less than par and if I recollect right you made a suggestion on that point how to avoid any difficulty on that score. I do not recollect distinctly what your idea was and would be pleased if you would give it to me. I do not wish to place myself in any way in the power of the managers of the A. and N. C. R.R. or under any obligations to them, for this matter has given us all trouble enough and when settled, I want it settled finally.

I have found Mrs. Clark's sketch of Father which she wrote for Gen'l. Hill's Magazine and which was supposed to be lost. It will be published in the same pamphlet with Judge Kerr's address and I will with much pleasure send you some copies of it.

I think of going to New York next month and will have it done there.

* * * * *

[P. S.] I shall do my best to have your claim and Gov. Graham's against the A. and N. C. R.R. paid off before the term of the present Board expires.

From John D. Whitford.

OFFICE OF THE
ATLANTIC AND NORTH CAROLINA RAIL ROAD COMPANY.

NEW BERN, N. C., May 15th, 1868.

Previous to the recd. of your second letter on the subject of the Arbitration of Gov. Moreheads claim, no doubt you received mine to you, on the same subject, which gave you the cause of the delay in answering your first.

At the last meeting of our Board of Directors I read your two letters and they expressed their gratification, which I now convey to you, to hear of your friendship and kindness and as early as practicable will settle the claim due you. I would however say, I might be able to pay you in 1st. Mortgage bonds of the Company, before we can obtain the money. I have given Gov. Graham the same notice and also, informed him I would, probably, be at the St. Nicholas Hotel, in New York, for the next two weeks, if you should wish to confer with me in this or any other subject. Mr. J. L. Morehead, agrees to take the bonds for his claim and I hope to arrange other claims against the Company, in the same way. The bonds can only be used to pay debts made prior to last November, by order of the stockholders and the mortgage takes the entire Road, Rolling stock etc., etc. \$200,000 is the amt. issued.

* * * * *

[Address: Hillsboro, N. C.]

From W. F. Leak.

ROCKINGHAM May 15/68.

I am the owner of the R. M. Company's Cotton and Woolen Mills of this place and am wishing to rebuild, but *at present* cannot command the cash to purchase the machinery with.

Thinking it more than probable that you either have funds that you wish to invest at a *good* rate of interest, or that you know of some one or more who has I now write you upon that subject.

I have one of the most eligible situations in the South, with a *perpendicular* fall of 24 feet, with *plenty* of water for every purpose with the Rail Road in 60 feet of the place.

The Prest. of the road has already sold Bonds, enough to finish the Road to Pee Dee and it will reach this place in some 3 mo.

I have stock left me, a good grist mill, some 20 operative Houses in good order with Store House, cotton sheds etc. and a chapel.

If any person will loan me \$30,000 to purchase the machinery I will rebuild at my *own expense* this cotton mill 84 by 44, three stories of brick and also rebuild the Lapper House 50 by 23 ft. one story of Brick, and will *give me ample time* and (the longer the better the investment) I will give them a *mortgage* on the premises, paying 8 pr ct *annually* and pay the principle at the time given.

Please let me hear from you

[P. S.] Two more might join and make the loan.

It has occurred to me that your son in Law Mr. Cameron has funds he would be glad to invest.

From Paul C. Cameron.

I am so much engaged in my potato planting that I hardly hoped to see you today. I sent up to you by Ruffin a letter from Gov. Swain with the request that you would answer it and accept the invitation for both of us. It will gratify the Governor to have a prompt response and it is proper that it should be made. If you have prepared the response please send it to me by the little girl.

I am trying shell lime mixed with plaster on my potatoes, and hope for fine results—ground in better order than I had expected and with an abundance of manure.

I send you the last National Intelligencer.

May 28th 68.

If you have not prepared your response to Swain and will not do it what shall I say for you.

[Address:

Judge Ruffin

Home

Nancy]

From J. L. Morehead.

NEW YORK
June 16th 1868.

I have settled with Whitford taking bonds and have invested the interest falling due in July, also in bonds and have now in my possession \$99,000 in Bonds.

Whitford has gone home and promised certainly to settle with you and Gov. Graham before he goes out of office which I urged him most strenuously to do and which I hope may be done in a few days.

Thus ends this troublesome matter. Spero Meliores in futuro.

I sent you last week a copy of the impeachment trial and send you by the same mail which takes this some of the notices by the City press of our wonderful engraving machine. Most of the daily papers have noticed it.

We have indeed raised a tremendous smoke which we confidently expect and have every reason to hope will soon burst forth into a blaze of profit.

[P. S.] The American Artisan—Scientific American—Tribune—Sun have all had very complimentary notices of the machine. The Herald Times and Commercial Advertiser will notice it this week.

From J. L. Morehead.

NEW YORK
June 19th, 1868.

Johnsie Evans writes me there is a *registered* letter in your post office directed to J. M. Morehead. Will you please have it forwarded to me at Charlotte.

I wrote you last week of my settlement with Whitford. I suppose you have heard from him before this as he promised to pay you and Gov. Graham right away.

I saw the Gov. here yesterday. Whitford had not returned to N. C. before he left.

Turner Morehead arrived here to-day.

We are all in very high spirits about our machine. It is growing in importance daily.

I enclose you some press notices.

From John D. Whitford.

GOLDSBORO

June 27th 1868;

Your letter is recd. I am now on my way North via Raleigh, where I have made arrangements by the sale of our Bonds, to raise money to pay all of the Companys indebtedness and will in a week or two remit the amt. of your bill. I imagine I will now hold over according [to] law and the Charter of the Company, as President of the Road until twenty days, at least, after the Governor elect qualifies as that term is expired before the Stock holders can meet. But to be on the safe side and knowing under existing circumstances, Claims similar to yours would not be soon paid, In the event of a change, I have in my possession or will have money to meet them and will certainly do so, this of course is for yourself. If I have time I shall pay them in the regular way and prefer it, if I must will pay them as I can, and which I think the honor and interest alike of the Company demands.

My object and desire is to leave not one cent of debt against the Company except the bonded debt created by the bonds first issued, hence the new comers will be out of debt and out of money, and any thing left over in the way of Claims, particularly, if not in the hands of their friends, would not be paid in a hurry and as there is now a mortgage on the Road it could not well be collected by law. Further to prevent giving the next board any excuse for not making promptly the interest or coupons on the bond, I have already paid those due 1st July next and will leave on deposit the amt. necessary to pay the interest also for Jany 1st. 1869, and I shall be careful to place it in such manner that it cannot be touched except as before stated. Pardon me for troubling you with another little matter and it is one to which I turn with satisfaction and pleasure from the busy scenes of life. Please say to Mr. Sterling Ruffin that I owe it to him, and now offer the amplest apology for *pulling him down on a level with married men*. I refer to my allusion to him as Dr. Ruffin. I thought of my mistake after the letter was mailed and regretted it. Not that it was not a compliment to him, perhaps, to mistake him for his excellent and worthy brother, the Dr., but because I do not think married men *are our equals* and I leave it to the *Young Ladies to decide if it is disputed*, that is to Miss Anne Roulhac and to Miss Sophy Manly.

In haste

From Thomas Atkinson.

OFFICE OF BORDER AGRICULTURAL SOCIETY OF VA. AND N. C.

DANVILLE VA. July 3d. 1868.

At the request of our President I write to say that our next Annual Fair will commence in this place on 20th Octo.

I enclose a copy of our printed "Address to the people of the Border Counties of Va. and N. C." and hope that you will favor us with your presence at the Fair.

I assure you that your attendance at our last Exhibition and the interest which you manifested in our proceedings, were the most interesting incidents connected with the occasion.

To Charles R. Thomas.¹

HILLSBOROUGH July 25, 1868.

My Dear Sir./

I enclose to your kind care the within order or Dft. of Colo. John D. Whitford, Prest etc. for \$625 and ask your friendly assistance in obtaining payment of it. It is given in vindication of the share of the Atlantic and No. Ca. Rail Company of the compensation to me in the arbitration between the Company and Mr. Morehead; which ought to have been paid nearly a year ago. Of course, Mr. Graham and I made no application for payment—leaving it to the Board at its convenience and expecting from it an adjustment as soon as convenient. The clerk of Guilford, however, without our direction or knowledge issued *Executions* in our names. As soon as the fact came to our knowledge, each of us countermanded them and authorised Colo. Whitford to have them superceded; as we had no purpose to be placed in that attitude towards the Road. I suppose, he did so, as I have heard nothing more of them, and the Colo. wrote me, expressing the satisfaction of himself and his Board at our course, and promising speedy payment. Since that I have received several letters from him to the same purport: in one of which he proposed I should take a *Bond* of the Co. of those recently ordered and secured by mortgage. Needing money in hand I had to decline that offer and then about a month ago, he wrote me, that he was on his way to New York to negotiate these bonds and would certainly remit me the amount out of the proceeds. Not hearing from him and having an urgent need of money I drew on him on the 21st Inst. and sent a young friend to

¹From the papers of Charles R. Thomas, now in the possession of his son, Hon. Charles R. Thomas, of New Bern, N. C.

Newbern with the Dft. Not finding him there, he came back to Raleigh and there had an interview with the Colo., who, after detaining him there a day, gave him the enclosed order of his Treasurer and wrote me the enclosed letter in explanation. Of course, as I am not informed of the financial affairs of the Company or of the Colonel's administration of them, I have no censure to make on his proceedings, but, on the contrary, suppose he has been, without his fault, disappointed in getting funds as explained in his letter. But his mis-carriage has worked a very serious inconvenience to me, as the young gentleman to whom I gave my Dft. is in great straits for money and applied to me for assistance, which I greatly desired to afford him and had only this means of doing so, except by incurring considerable [effort?] both to him and myself.

I trouble you, my dear Sir, with this detail in excuse for imposing on your goodness by asking your attention to this affair for me: which I could not presume to do, if I were not conscious of a readiness on my part, if, in my power, to reciprocate the service. I need the money and shall be thankful to get it. But I wish you to understand that I have not at all in view any legal proceedings to coerce payment either on the record in Guilford or this order, as I still retain the same disposition towards the Road and its authorities, which have actuated me hitherto. But I hope, it will be in your power by application to the Treasurer or, if need be to the Directors to obtain payment. I do not know, who constitute the present Board, except that I have heard, that Mr. Stanly and yourself are two of them; and I am very sure, that neither of you would be inclined to throw any obstacle in my way, but on the contrary, would promote a settlement, because you and he are well aware that all I got was dearly earned and its satisfaction would be right and proper. I must say, that such is the fact; for in all my professional experience I never had to deal with a controversy so weighty, so prolix, perplexed and puzzling. The labour, fatigue, responsibility and the wear and tear of the long service was such that it exhausted me, and I would not undertake the like again for five times the same remuneration! But that is past and I have now only to take what I can get, and to get it in the easiest way I can

I am, Dear Sir, your friend and Svt.

THOMAS RUFFIN.

The Hon. C. R. Thomas
Newbern
No. Ca.

From William J. Hawkins.

RALEIGH AND GASTON RAIL ROAD COMPANY.

PRESIDENT'S OFFICE.

RALEIGH, N. C. August 15th, 1868.

Yours to hand yesterday and I take great pleasure in answering it. Your shingles coming from Blackwater were charged the same over the S. and R. as if sent from Portsmouth and over our Road the same as coming through—but if the shingles had been for Charlotte and points south a less charge on all of the line would have been made. Our freights may appear too much in comparison with the No. Ca. rate, they dont charge enough and if they had no through business or men dependent on the charges as now made on some articles (others are plenty high) at way stations they would not be able to sustain themselves, that and no other Road at the South can be kept up in No. 1 order for less than \$2,000 per mile per annum.

You see it takes a certain Amt. of business to live, to sustain itself; and when it is increasing beyond that, reduction can be made from time to time looking to keeping matters up—we are endeavoring to keep up our Road to a 1st class and if possible pay dividends and until our business increases from some quarter cant see how we can reduce or do with less money. I took dinner a short time since with Mr. Edwards he was quite well and all except Mrs. Banks. She was feeble. My boy quite well now at home, will go to the Va. University in Sept. Will deliver your message and take pleasure at any and all times in doing anything for you I can.

I am Yours Truly

W. J. HAWKINS.

[Address: Hillsboro, N. C.]

From J. L. Morehead.

CHARLOTTE N. C.

Aug. 18th, 1868.

I regretted to hear from Mr. Cameron and Gov. Graham who I met in Raleigh last week at the Convention, that Whitford did not pay you before he went out of office, tho' I must confess I am not surprised at any failure the last administration of the Rd. made in regard to the payment of money.

With a man so utterly incompetent and out of place as the last Pres't was, no one who is at all acquainted with the management of

the R'd could have expected anything else. Indeed the complete financial prostration of the road is evidence enough of his utter incapacity.

At the last meeting of the Board I attended I had a resolution passed to pay off your claims as soon as it could be done and certainly expected some effort would have been made to do so.

I greatly regret the necessity of the R'd going into radical hands but still I am satisfied that any change from the Newbern clique will be to the advantage of all parties interested in the Co and I believe you will get your money sooner than if the R'd had remained under the old management.

I will write to Stanley on the subject and also get Mr. Gray, who is a director, to look after your interest and see that you and the Gov. are paid as soon as possible.

With the bright prospect of a glorious triumph over the radicals at the next election I hope for a better time in our country both financially and politically.

From Thomas R. Roulhac.

SAN FRANCISCO CAL.
Sept. 18th, 1868.

Hon Thos. Ruffin
Hillsborough N. C.

My dear Grandfather:

My letter will of itself inform you that I have reached here, without fatal mishap by land or sea. It is only needed then for me to state that I came safe and sound on Wednesday, day before yesterday, the 16th of the month. I had intended to write to you at once the first day to assure my friends of my safety and health, and would have done so but that Mr. Jno. Stanly called upon me within two hours of my arrival and carried me off to look at the sights and to open my eyes with amazement at the marvel this city is of itself—so vast, so rich and flourishing, and all this attained in a period of twenty years. One, born and bred in old North Carolina can scarcely realize that it is not *all* fabulous and, after a perception of its truth begins to dawn upon him, is in a fair state to believe any thing that anybody tells him. Such, at least, is my condition, and when I hear anyone relate what at any other time would have seemed incredible I make no show of skepticism, but only stare for a moment to be sure that I hear aright, and then swallow it down.

My trip here was almost entirely devoid of adventure though extremely interesting to me; and unlike a friend of mine, who on his

first visit to the City repressed all manifestation of amusement or excitement at the novelties presented to his eye for fear of displaying his rusticity, I gave myself up to complete and undisguised interest, and had I had any one to whom to comment upon those things, I now saw for the first time, he would readily have perceived that I was country bred, and would have surmised that I had never seen a collection of houses, however small, and that my friends and acquaintances did not differ from me in those respects. I spent one day in Richmond as I intended with Willie and derived much pleasure from it, for he is a boy of many excellent qualities combined with a most affectionate disposition; and moreover I found as well as I could see that he was in good standing with his employers and business associates, which fact certainly did not serve to diminish the pleasure I felt at being with him. Having two hours to lay over at Washington City, I visited the Capitol and went hastily over a part of it, from thence our route lay thro' Baltimore, Phila, and to New York. We passed through the cities and numerous towns, of course too quickly for me to catch more than a glimpse of them; but the country bustling and teeming with activity, trade and enterprise being so different from the part of the world to which I was accustomed served to keep my thoughts busy and to prevent any fatigue or discomfort from the journey. I hope these details may not be tiresome to you, who have witnessed often what I beheld then for the first time; but to insure against such a result I will only add that I found out Mr. Jno. Potts Brown in New York, obtained from him the passage ticket he had bought for me, was directed by him how to get exchange on California, did so and by noon on the Monday following my departure from home was on board a magnificent steamer at the Wharf in New York, with a good State Room and berth, my baggage stowed away; and when the gun was fired stood upon the deck, feeling gloomy and sad at seeing almost everybody else saying good-bye to somebody and I all alone; but I consoled myself with remembering that though I had none to go through the forms of leave-taking, my course was watched and my welfare hoped for by friends the best and truest and dearest the world contains. Finally the last gun was fired, the last bell rung, the plank was drawn in and we were off, the passengers crowding the decks, waving handkerchiefs some calling to friends on shore, sending messages and some weeping aloud, while I stood by grim and grum thinking of you all and eventually at the suggestion and invitation of one, who occupied the same State Room as myself, took a glass of grog to the health, happiness and long life of every good soul in old Hillsborough. Upon mutual introductions all around I found those who were to share my room pleasant companions—one a Marylander and the other an Englishman of the better sort, who made no claim to belonging to the aristocracy which I should not have believed, but who shewed by his manners that he had been raised respectably.

Throughout the whole voyage I found them agreeable, considerate, sufficiently talkative and gentlemanly. After supper the first night, that terrible monster, sea-sickness began to make its appearance among the passengers and groans and tribulations were continuous throughout the night. I did not experience any then, but the next morning at breakfast I was forced to beat a hasty retreat from the table: I hurried to the gunwales, expecting and indeed anxious to make my offering to the briny deep, and with that view took my place in line stretched all along it and stared into the water below. I found myself between a dried-up, parchment faced Frenchman on the one side and a woman with an Hibernian cast of countenance on the other, they were both doing their very best in a sea-sick way throwing in, whenever they had a breathing space, remarks sufficiently ludicrous to set me laughing even at such a time as that, and the *laugh*, joined to a glass of whiskey, settled my stomach, and that was the last of my sickness, so that when we passed Cape Hatteras, and when we got into the Carribean, which like Horace's stormy Adriatic makes one feel the majesty of the mighty Ocean, I could stand at the bow end of the hurricane deck, see the waves roll and the ship rise and fall, and feel my blood jump in my veins as if I were riding a prancing rearing horse. We passed Cuba and one or two other islands on the way and reached Aspinwall on the Isthmus seven days after leaving N. Y. Everything was new and strange to me of course. We were first boarded and examined by a Spanish Health Officer who stunk bad enough with musk to give any one the cholera, could it be received through the olfactories. Aspinwall was crowded with negroes, Indians, Sailors and Yankees, the negroes engaged in vending tropical fruits, curiosities of the country etc; sailors lounging about and Yankees, dear creatures, picking up money in every way and form conceivable. From Aspinwall we went by rail road to Panama, a walled city of the mediaeval day, across the Isthmus. I wish I could give you some faint conception of the appearance of that spot. Covered, crowded, and choked with vegetation it is one of the loveliest spots the eye of mortal ever beheld, and the termination of it at Panama is a fitting one, surpassing all the rest in beauty and gorgeousness with its picturesque old City nestling at the foot of high frowning rugged mountains, on the shore of the most lovely bay that was ever created. Which bay lying like a sheet of burnished silver, is enclosed on the outer side by a line of bright, green, sparkling islands, stationed at almost regular intervals around the mouth of the Bay. You are at first sight lost in admiration and can find no words save exclamations of your delight. Oh! the gorgeous Isthmus! Oh! magnificent Panama! This world is so beautiful to me that I do not think I could ever be at a loss for pleasure, when I could look upon its enchanting scenes. To conclude my account of the trip, we left Panama and after a voyage of fifteen days along the Pacific Coast of Central America,

Mexico and Lower California, reached here as stated above. Since that time I have met several gentlemen who have shewn me much courtesy and kindness, among them particularly Mr. Jno. Stanly, and Mr. Bradley of Wilmington, and one or two others, to all of whom I feel very grateful. I have spent the time in looking around and making inquiries, relative to my settling here and engaging in Law. In a day or two I shall run up to Stockton and look at things there. Should I find it to my advantage to remain there I shall do so, instead of returning to San Francisco; if not I shall return and go to work.

I almost break down on the point of sending messages to the people at home. All their faces crowd around me and the thought of separation from them fills me with the keenest sorrow. To them all give all the love heart can contain, commencing from my Mother and dear Grandmother through both their families to the Camerons, the Ruffins, the Kirklands and everybody else. I am grateful most truly for all their kindness and gentleness to me. And do not forget please sir, to tell Cousin Thos. Cain that I regretted not being able to say farewell to him and to Cousin James and his family; from both of these gentlemen I have been the recipient of much kind treatment and many marks of affection. I shall always treasure the recollection of it. Indeed everyone in Hillsboro had shown me regard and from no people on earth would I value it so much. I sincerely hope Uncle John Ruffin's little boy Sterling has been restored to health though I fear that it is not so, from the accounts we rec'd before I left.

Give love to them all in Graham and tell Uncle Tom I intend writing to him as soon as I have the time. Love to Uncle William, Uncle Sterling and Auntie and Aunt Patty. Say to Uncle Sterl that when I heard the Spaniards call Cuba, Coo-bar, I thought of him and Jim Taylor. Do Uncle Sterl and Uncle William still quarrel about the constitution? I should like to hear them at it once more.

When we were crossing the Isthmus we passed an Indian village on the Chagras River from which the inhabitants rushed to look at the cars, their styles of dress were decidedly simple and inexpensive, being provided by nature at the date of their birth, in that they were naked. I sat in a car just behind a good looking old Lady, who observing some excitement and commotion among the other passengers, adjusted her specs and raised the window to see what was going on. Very soon she turned to me with a countenance much perturbed asking, Bless my heart! they haven't on any clothing, have they? Not that I can detect, Madam, I replied. Oh! dear me! dear me! exclaimed the old Lady and relapsed into a fit of musing. Whether the shocking simplicity of barbarism or the unnecessary troubles of civilization I was at a loss to determine. I thought however, how Aunt Mary Kirkland would have laughed at the old Lady's perplexity.

I have scarcely left myself room to say many things to you that I have often wished you to know I felt most deeply and sincerely and

which I have more than once endeavored to say to you: and that is, dear Papa, my gratitude and filial love for all your goodness and affection to me. What I should have been in the world without your direction, assistance and fatherly protection, when left an orphan, growing into a perverse, headstrong, and untractable youth, I can not know though closely presume. 'Tis yet too early for me to speak of what I will be; but having in return for your fatherly care and nurture the strongest attachment a son can feel and desire to reward, as far as in me lies, your kindness by being as you would have me, I can only resolve to follow such a course as would meet your approval, hoping by that means to convey to you the knowledge that my love and grateful feeling is without limit and will last forever. My thankfulness cannot be uttered, but you must know how great it is. Should I ever attain to anything in this world, or in the life hereafter, I may safely acknowledge it to be due to my mother's love and to your guidance. God bless you for all your goodness to me, and can I by all my efforts add one moment of pleasure to your life shall thank God for the means of so doing. I pray that Heaven may prolong your days in peace and happiness till I can once more see you, speak with you, receive your commendation and blessing, and have the opportunity of being some comfort and solace to your declining years. Once more let me tell you how dearly I love you and yours, and ask for your blessings always to be upon

Your affectionate grandson

THOS. R. ROULHAC.

From William H. Battle.

CHAPEL HILL, Sept. 21st 1868.

I have received and read with much interest your letter in relation to Mr. Moore's protest against the partisan conduct of the Judges of the Supreme Court.¹ I suppose I am hardly qualified now to decide the question you propose, as I have already formed and expressed an opinion upon it. In my reply to Mr. Moore I said that while I concurred with the sentiments expressed in his letter, I thought the publication of the paper he sent for my signature would do no good and might do much harm. I thought the people would be just as likely to take sides with the Judges as with the members of the bar, and I referred to the memorable contest between Judges Ashe, Spencer and

¹Bartholomew F. Moore had prepared for publication a strong protest against the action of the judges in the State in engaging in politics during the presidential campaign of 1868 which, after being signed by one hundred and eight members of the bar of the Supreme Court, was published in 1869. See Hamilton, *Reconstruction in North Carolina*, pp. 390-395.

Williams on the one side, and all the great lawyers of the day, Iredell, Hooper etc. on the other, in which the latter got badly worsted. The only persons whom I thought it proper to consult here were Mr. Argo and Prof. Charles Phillips as they agreed with me, I returned the paper unsigned.

Had I had the advantage of your views I might possibly have come to a different conclusion, but of that I am not sure. Such a publication as the one prepared by Mr. Moore and aimed only at the Judges of the Supreme Court, would as Gov. Graham says, be regarded as of a factious character, and would on that account fail of its intended effect. A change of rulers is, in my opinion, the only sure remedy for the evils by which our country is now afflicted. I sincerely hope that change may soon be effected.

I thank you heartily for your kind invitation to pay you a visit. I should like to do so, but my time is so much engrossed at this time that I cannot leave home.

Should Judge Manly and yourself differ from me as to the propriety of the protest on the part of the members of the bar, yet I am inclined to the opinion that neither you, he nor I should join in it. The fact that we have been Judges of the Supreme Court would give the protest to some extent, a self laudatory character, which ought by all means to be avoided.

It is hardly necessary for me to say that the very kind and frank manner in which you have expressed your sentiments upon the subject embraced in your letter shall insure its being treated as strictly confidential.

Hon Thomas Ruffin
Hillsborough
N. Carolina.

From Weldon N. Edwards.

POPLAR MOUNT, 21st Sept. 1868.

* * * * *

I have long earnestly wished to write you and often resolved to do so. Every cause but want of inclination has prevented. The "Vis Inertiae" of old age has so crippled my faculties that any the slightest employment, even manipulation itself, is irksome to me, and I turn from it. The Will has lost its power of command and for execution I have to depend upon some casual excitement. I scribble this merely to assure you that I still remember you with as much warmth of Heart as ever and to give you most heartfelt thanks for your very kind and

highly valued message sent me many weeks ago thro' a letter to Dr. Hawkins, which he permitted me to read. It gratified me much to see that you still retained the facility of writing and the command of language, which have always peculiarly marked your productions. How different with me, and when I tell you I am worn out, I refer you to my Photograph inclosed, taken several months ago. The deep furrows in my face, like old pathways, made by the tramp of time, and the wearing away of the expression show the ravages which have been committed. This is not complaint, far from it, for after all a kind Providence blesses me with good Health, and freedom from all the pains usually attendant upon extreme age. Besides my spirits are not bad, not sunk "in the slough of despond," and if it were not for the troubles of my Country and the sufferings of my Fellow Countrymen, for whose kindness to me from Boyhood to this day I owe a debt as lasting as life, which I would not if I could, extinguish, I could spend the remnant of my days in tranquil ease. I live upon my rents, determined to avoid the Penalty denounced against him who neglects to provide for his family. I make no crop, keep nothing around me which the hand of rapine can seize, and therefore my personal attention is not much taxed. *All quiet here.*

After you have examined the Photograph and found it a truthful witness to the account given you of myself, I beg you will present it to my good and valued and well remembered friend Miss Pattie R. and ask her acceptance of it as a token of my high Esteem and as a souvenir of her Father's oldest Friend.

I have tried to write you, about myself only, not about the frightful corruption seen and felt in all the walks of life, public and private, the contemning of all moral principle, the subordination of virtue and intelligence to vice and ignorance, and the desolation and ruin which must inevitably result.

* * * * *

Hon. Thos. Ruffin Senr.
Hillsboro.

From W. T. Sutherland.

DANVILLE Oct 5th 1868.

Enclosed please find certificates of Life Membership of The Border Agl. Soc'y. Our second annual Fair commencing 20th inst, when we hope to see you present again with us. We hope to make the Fair a success but must rely much upon our friends at a distance to aid us with their presence as well as to talk for us, come and aid us to arouse in the minds of our people an interest for something profitable and

prevent if possible this nightmare of despondency which seems to be stealing over them and bids fair to paralyze the little energy left them. The certificate enclosed will pass you over the R. Rds.

Judge Ruffin
Hillsboro N. C.

From William H. Battle.

CHAPEL HILL Nov. 5th 1868.

The book—Fanning's Narrative—has been safely returned. I have read with much interest the letter which accompanied it. I have not a doubt that our friend would have been much interested (had his life been spared) in hearing your account of Judge Murphey's efforts to procure Fanning's manuscript. The mention of Judge Murphey, reminds me to say how much I have always regretted that he did not live to complete a History of North Carolina. His work would doubtless have reflected credit upon the State, as well as advanced his own reputation as a literary man. Since his day no person has been so competent to the task as our deceased friend, Gov. Swain; and I think that it is much to be regretted that he did not devote several of the latter years of his life to it. Had he done so, he might have escaped some of the ill natured things that were said of him after the war, and his name might now stand higher than, I fear, it does in the minds of some prejudiced persons. With some failings he had many virtues, and North Carolina has lost few, if any, sons, who were more devoted to her true interests. I trust that the time will soon come when full justice will be done to his memory.

My attendance upon the late General Convention of our church was very pleasant and instructive. I never saw a more harmonious body; and I was happy to see that the Northern members were disposed to be especially kind to their Southern brethren. An allusion to this statement made by Judge Sheffey of Virginia in a speech in which he said that our church had proved itself to be superior to party and stronger than faction, was received with a burst of applause. Among the members were men of every variety of political opinion and yet not a word of the character of party politicks was uttered in the House during the whole session.

I met one or two gentlemen who had served with you in the Convention of 1853 who made kind inquiries after you. I was glad to be able tell them that you were still living in the full enjoyment of your mental faculties at the advanced age of eighty years.

* * * * *

To Hon. Thomas Ruffin
Hillsborough
N. C.

From W. F. Leak.

ROCKINGHAM Nov. 27th/68.

I am about rebuilding my *Burnt* Cotton mills and for the want of means to accomplish so large an Enterprize I propose to let others take stock "in it"; upon the *very reasonable* proposition I now submit, to you and your son in Law Paul Cameron Esq. should either conclude to accept.

I have *decidedly* one of the most splendid and romantic water powers in the South with *plenty* of water at *all seasons*, and in the *Heart of a cotton Country*.

There was left on the premises by the Yankee Scoundrels some 20 good operative Houses, large Store Houses, cotton sheds and a new church for worship, and a *valuable* grist mill.

I have 24 feet *perpendicular* fall, and use the water *first* for grinding and afterwards for the Cotton Mills.

I have had the Burnt Walls examined by an experienced Architect; who reports that they are all sufficient to rebuild and proposes for \$3,500 to place the mills back as before the fire.

The N. C. Rl. Rd. runs now daily within 90 feet of the mills and I propose to put up a first class flour mill and grind for the Southern Cities, which I shall do as soon as the road shall get into the Western counties, where wheat can be procured.

I bought the entire establishment for \$16,000 in cash.

I propose then to you and your son in Law and to any others who may wish that if they will take stock to Build the cotton Mills, that I will let them come in as I do myself at the original cost of the mills, when bought by myself, which was \$16,000.

If either of you have any surplus you wish to invest, I say as a friend, that this will be *as safe* and as good an investment as you can possibly make; for there is *no doubt* we shall make, after we get fairly started 15 to 20 pr. ct. pr. annum.

The "site" will include 20 acres of land, and is *immediately* adjoining our village, which is now *rapidly* building up, and must in some two or more years quadruple its population; which is now about 1000 inhabitants.

One-half of the Stock will be calld. for in 1869, the other in the early part of 1870.

The establishment is certain to be *well managed* for my self and son in Law Col. Jno. W. Leak, will have charge of its finances as, also a general supervision of the concern.

Please let me hear from you, as soon as you have thought it over.

From W. F. Leak.

ROCKINGHAM Decr. 7th/68.

I have recd yours in reply for which accept my thanks.

I have written to Paul Cameron Esq. giving all the information in my power and after I got your letter thinking it highly probable that he might take stock I wrote on to Raleigh and took the liberty of placing him as one of the corporators, well knowing, that even should he not join he would incur nothing thereby.

Myself and my 3 sons in Law (assuming that \$30,000 will be sufficient to start with) will take *one half* of the stock and will take *one half* even if it requires \$50,000 to spin and weave.

I have commenced rebuilding and have contracted with a workman and gave him \$1000 to replace the Mills as they were before the Fire and I have also employ^d Masons and shall superintend the work myself and intend charging the new company nothing for my services.

I have had some 30 years experience in manufacturing and hesitate not to say that we will Divide *at least* 15 pr. cent and after the mills are under fair way, 20 pr. cent.

The investment is perfectly good as well as *perfectly safe*.

Col. Jno W. Leak and myself will take charge of its finances and will have a general supervision of the concern.

Mr. Cameron wishes to know at what sum John and myself can be obtained for that purpose and I have replied by saying we should be perfectly willing to leave that to the Directors.

I propose as soon as the railroad shall reach the wheat counties to erect a first class flour mill and furnish flour for the Southern cities this I believe would likewise be profitable, for even the toll itself with some 2 pair of Burr rock running daily and wheat may be got by the thousands and deliverd. at the Door of the mills, it is now finished to this place and will be finished to the River *early in the spring* and a force pushing the road west, which it will reach in some two years.

Heretofore, the Company was very much pestered about *small* notes for change.

Please inform me whether we should incur any liability, by issuing small notes ourselves.

I have my doubts, that, or rather my fears, that we could not do so, but take your opinion.

The notes, would simply be "one day after date" we promise to pay the Bearer 10 cents. public opinion in this county would *sustain* us but *the law*, in this *day of no law*, might not.

Indeed nothing is *now safe* for if you have money you cannot loan to every *responsible* man, and if you *keep it*, or hoard, some *Radical* scoundrel might break open the House and steal it.

What little I have I *keep* under ground, it being *gold*, it will not injure, *this* is the main reason why I am now going to rebuild the mills and if I was as intimately acquainted with Paul Cameron as I am with you, I would advise him as a *friend*, to take all the stock himself and sister conveniently can.

For fear he may not receive my letter you will please shew him this letter and tell him to write to me on the subject.

[P. S.] George Makepeace of Franklinsville speaks of taking for himself and friends 10 to \$15,000.

I wish he would, for we have had him some years to take charge of our mills and a better or more reliable man cannot be got.

I think it not improbable but that B. F. Moore of Raleigh will take stock.

From W. F. Leak.

ROCKINGHAM Dec. 8th/68.

I am about collecting a "group" of the photographs of my most distinguish^d. contemporaries of North Carolina, for the purpose of putting them in a nice frame for preservation, and should be pleased, by your sending yours; which is intended for the centrepiece of the "gallery."

I am very desirous to do this, for the age has gone by of men distinguished for their character for moral integrity and individual worth; Yes my Dear Sir; we are becoming sadly deficient in men who have the *moral courage* to do right, regardless of any outward pressure; such men, we once had and a few are now remaining, who would "rather be right" (as H. Clay once said,) "than be President."

I have already recd. some Photographs.

From Thomas Ruffin Jr.

GRAHAM Dec. 28th 1868.

I write to beg you to excuse me for the delay, which has occurred, in sending your apples: and to make excuse to you for it.

My man Robert has been drunk ever since Christmas morning, and I have not been able to get him to do a single thing of any sort: and nearly everybody else here has been in the same condition, so that we have not been able to get the services of any one.

I would have sent them out by Jimmy, but that there was no one at the Depot but one Mr. McMurry, and there was no telling whether he would help him to take the bag off or not:

I will send them down in the morning certainly, and hope they will reach you safely:

I write to ask a favor of you—one that I know will surprise you—and yet I hope you will excuse me for asking it.

The office of "assessor" for this District is about to become vacant and there are two applicants for it: Frank Wheeler; the son of the present incumbent, and Daniel Hodgins: The former has been in the office as assistant of his father ever since the office has been established; he is familiar with the duties, and both he and his father have established universally fair reputations for integrity and honesty:

They have both been firm and decided in their efforts to shield our people from oppressions and have been open in their denunciations of those engaged in them.

Under the circumstances I think his appointment would be a fortunate one for the district and I beg that you will address a note to president Johnson asking for his appointment, unless there be some reason, unknown to me, why you should not.

Mr. Hodgins, the other applicant, is at present a member of the Legislature from Guilford County—has been a long time connected with the Collector's office in Greensboro, and is understood to have been one of the most active agents in the frauds and oppressions that have been practiced upon the people. His appointment would be a great public misfortune.

If you can give me the note I ask for please do so by return mail.

We are all well! Our household very busy packing up:

From George W. Mordecai.

RALEIGH 29 Decr. 1868.

I enclose you a note just recd. from the Treasury Department the response to my application. You will see from that, that it is not worth while to come down until further informed.

I hope you have all had a happy Christmas and that it may be succeeded by a happy new year to you and yours.

[ENCLOSURE]

From Donald W. Bain to George W. Mordecai.

STATE OF NORTH CAROLINA

TREASURY DEPARTMENT

RALEIGH, Dec. 29, 1868.

Mr Mordecai—

The Treas'r is endeavoring to make arrangements by which the interest accruing 1st Jan. next will be paid. He is hopeful of success.

To save Judge Ruffin the trouble of coming down on an uncertainty, please say to him that I will let you know, so that you may inform him, when arrangements are perfected. The Treas'r being absent, I answer for him.

Very resp^{ly}

D. W. BAIN,
Ch'f. Cl'k.

From Weldon N. Edwards.

POPLAR MOUNT, 25th Jany. 1869.

My dear old—oldest Friend.

This, as you know, is my Birthday—Tomorrow I enter my 82d. year. I shall not surprise you then by telling you that I am past writing—past thinking—for thinking worries and tires the Brain—and as for spelling I am obliged to keep the Dictionary by me. Nevertheless I cannot forbear the effort to write you—not a letter—in that I am sure I could not succeed to my liking—but some account of myself—even in this I may fail—for my thoughts are so rambling and incoherent I cannot command them. I can only command the muscles of the hand. To begin then, I have a Cold and a Cough—but for that, my Health is good. I feel none of the pains which usually afflict in extreme age, and were it not for the continually recurring infirmities of the mind, I should scarcely be sensible of the ravages of time. My spirits cannot be said to be bad, they still stand me in good stead, and lift me above and beyond the Gloom and despondency so common in these awfully distempered times. In better days and in a better state of manhood, I contracted Habits of *Action*, in which, I still indulge, by pruning my apple, Peach and other Trees, nursing the shrubbery and fruits in the Garden and patching the holes around the Yard, Garden and orchards. These constitute my only labors, and are undertaken for the sake of employment only. They furnish a temporary reprieve from the discomfort and concern occasioned by the beggary, want and distress which pervade the whole land. I say nothing of the unexampled and deep-rooted vice and corruption that infest and afflict in every walk of life which beggars all description, and which, sleeping or awake, I cannot escape from. Poor N. Carolina! All the evil moral principles of our nature are turned loose upon her, as if from Pandemonium, and not even *Hope*, the medicine of the miserable, is left to her People. My memory is very bad, my Hearing also—but my Eyesight capital.

With the increase of years, I long more and more for the society and conversation of the friends of early life. The sad Havoc of time has left none to me but yourself. But this is a tax and a heavy tax

too upon long life, and who have the worst of the Bargain—those who go first, or those who are left behind, *friendless?* is a Problem hard to be solved. No Philosophy can bring back the friends we have lost—or soothe the repinings at our destitution. Acquaintances are almost of daily manufacture and when bereft of these, their places can be supplied by the same easy means they were acquired, by social intercourse, and not unfrequently, by *accident*.

I have thus tried to write you, “pass all imperfections by”—I venture *now*, only to assure you of my constant and affectionate remembrance, and to avoid the appearance of neglecting an old Friend, for whom I have always cherished and ever shall cherish a warm and heartfelt attachment and regard. *Let me hear from you.* What’s yr. Health, and what your spirit and well-doing. I wrote you many months ago, but fear my letter did not reach you. Remember me most kindly to Mrs. R. and all your family. I write with a tremulous and unsteady hand, am obliged to lift the pen at every letter—but I trust and believe it will never fail in the effort to assure you, as I now do, how cordially I wish you, from the bottom of my heart, good, unmixed with evil, and the ability to bear easily all the physical ills of life; and how much and sincerely and affectionately I am Yr. old, fast and constant Friend;

W. N. EDWARDS.

To Hon: Thomas Ruffin Senr.
Hillsboro, N. C.

From R. A. Hamilton.

YOUNG’S CROSS ROADS P. O.
GRANVILLE COUNTY, N. C.
8 Feby 1869.

I venture, for a few moments, to obtrude myself upon your attention. With impaired health and, like other true adherents to the Confederate Cause, with circumstances reduced from what they were, with my family encountering all or nearly all the horrors of the seige and shelling of Petersburg—I retired 18 or 20 months since to a little farm I had here, to be out of the bustle and turmoil of disagreeable political surroundings (as far as practicable) and endeavor to restore my health, and in quiet and comparatively independent life of a small farmer, enjoy as much peace and repose as might be consistent with our present political and social circumstances. I have had no cause to regret doing so, tho to some extent disappointed as to the material benefit to my health, anticipated, and of course in some degree, meeting with discomfort arising out of the recent emancipation and political

elevation of the black race and its necessary results upon them—And here Sir, I desire to express the profound indignation with which I heard of the outrages allowed and perpetrated by little Bureau officials or rather scoundrels, upon one whom I so much respected and venerated as yourself. It was an outrage which brands them and their superiors with indelible infamy. Poor unhappy Country! *how* a kind Providence could have allowed the crushing of the Southern people and their just Cause and the subsequent and still existing horrors is more than I can fathom. But thus it is,—and Manly and Noble people must not lie down in despair but endeavor to conquer the situation and restore themselves and their State as far as practicable. And in connection with this I shall mention one of the leading motives for troubling you with this note. Is it not desirable to resuscitate the State Agricultural Society? Is it not still more needed now than at the time when we enjoyed those pleasant and successful re-unions before the war? If you answer Yes, then I say the voice of the “old chief” (pardon me) is the only one in our present depressed condition that can galvanize it into life. What say you, Sir? The people of the Va. State Soc. headed by such men as Willoughby Newton, Frank Ruffin W. T. Southerlin and others have taken and are taking efficient steps to infuse life and vigor into theirs. Let Judge Ruffin speak and many will rally to his side. Let us have a fair at Raleigh next fall and let steps be taken *now* to ensure success.

Pardon me for, perhaps, disturbing that repose and retirement which I am sure, are more congenial to your comfort than participating in more public concerns (I feel the same) but it is a noble cause, free from political or other dissensions and will, I believe, be of great service to our beloved Mother State.

Should it not be inconvenient I beg that I may hear from you and remain, Dear Sir,

To Judge Ruffin
Hillsboro’.

From W. F. Leak.

ROCKINGHAM Feby 19th/69.

If it will not be much *trouble* to you and I suppose not, I would ask your opinion upon the following case I expect to raise and take to the Supreme Court.

The *Radicals* as you have seen are about trying and no doubt will get possession of the W. C. and Rutherford Rail Road.

The charter as *amended* gives to the Governor, the appointment of 7 and the Stockholders are to appoint 6 of the Directors.

I am opposed "*toto coelo*" to the *unprincipled* movement as one of the *original* Stock Holders, who built the Road, I wish to know your opinion as to the *constitutionality* of the step they have taken and whether they *cannot* be arrested by a Bill and if so, *who* are to be the parties and to *whom* shall I apply for the Bill.

Please excuse the little trouble your old friend has imposed, for I feel a great interest in the matter.

[Endorsed in Leak's hand.]

By the *old charter*, the State had no *voice in the election of the Directors*.

The present amendment imposes new "*ex post facto*" *conditions* and such terms, as the Stock Holders never even *dreamed* of and such as they *will not*, submit to, if they can avoid it.

The amendment will *certainly* be recd. for the Wilmington Stock now under *Radical* contrroll will carry it, with some few other *Radical* counties they can get.

*From John W. Graham.*¹

RALEIGH, N. C. March 23d, 1869.

I find out that the Resolution to appoint a Committee of Enquiry in regard to the Piedmont Rail Road is designed to investigate the building and ownership of the said Road, the payment of iron taken from the Statesville Road and from the State. This is alleged to [be] the object, but from what I learn, the real object is to provide pay for some members of the Legislature who have nothing to do this summer. Please say to Col. Ruffin that I will try and get the Bill through of which he writes.

From Kenneth Rayner.

MEMPHIS TEN: July 5—1869.

I reached this place with my entire family, on the 25- 'June; all well, but considerably fatigued by the journey. I have been engaged here in making arrangements for operating a steam saw mill, eleven miles above here on the river, on a 2000 acre tract of land, given to

¹John Washington Graham, of Hillsboro, 1838—, the son of William A. Graham, who had been a member of the Convention of 1868, and was at this time State Senator.

my wife by her father. It is the finest timbered body of land I have ever seen. The cypress has been much plundered, but there is still a good deal of cypress left. The cypress, we propose to put in shingles, which pays 100 per cent more, than in sawed lumber. Shingles are worth here \$6½ per thousand. We have a shingle machine, which will be operated by steam. The Poplar, Oak, and a large red-hearted gum (used to a very great extent in this country, for framing) is in almost endless quantity. Such White oak timber I never saw. For curiosity's sake I have frequently stood still, and counted within the immediate scope of vision, 20 White oak trees, with trunks from 50 to 60 feet to a limb, and from 4 to 6 feet in diameter. The large Yellow hearted Poplar, abounds, of equal number and similar magnitude. With the advantages we shall possess, it seems to me we shall find it very profitable. Mr. Theo. Irion, formerly of Raleigh, is my partner, and will be the practical operator and manager. He has his fixtures all prepared—has a large quantity of logs cut and hauled, and we expect our engine in a few days.

I have not yet been down the river, to look after my cotton planting interest. My partner in the upper, a Mississippi place, left here yesterday morning. He represents the prospect as far better, than I had supposed, after such a disastrous overflow. He tells me we have 800 acres in cotton—that it is late and young; but that the stand is a fair one, and in the whole, he is hopeful. He says no such freshet has been known in the memory of any one living on the river—that it was 10 inches higher than the great overflow of 1844. He says he planted cotton four times, before he could get a stand—that the cut worm (the same that is so destructive to corn in No. Ca. in cool weather in Spring) would take down *every* stalk, as fast as it came through the ground. This is the case all over the overflowed section. The disasters and misfortunes the planters have had to contend with this year, are even greater than they were last year. The "*Buffaloe gnat*" has been very destructive to mules, and a great many have been killed by them. This evening I saw Gen. Donelson just from his plantation in Bolivar County. He tells me a new disease has just appeared among the mules, and great numbers are dieing. It first appears by a swelling in the flank, and in a few hours the animal is dead. Many planters have lost half of their number. He further informed me, that in the county below him (Washington) a species of *locust* has attacked the young cotton, and are destroying it terribly. They penetrate the green stalk, with a sort of proboscis, with which they are armed, and suck it to death. In addition to all this, the rains are incessant—the ground too wet to plow, and the grass threatening to overcome the young cotton. This trouble prevails on the uplands, equally with the bottom. The prospect for cotton growers, is dark and gloomy indeed.

At my lower place in Arkansas, I was more favored, so far as regards high water. I had 300 acres, that was not hurt by water; and which was planted early. But my overseer writes very discouragingly concerning the idleness and insubordination of the negroes. What a miserable set of ungrateful wretches they are! These are my former slaves, that I sent for to Texas, and had brought back, at very considerable expense at their own earnest and repeated solicitations. When I get down there, I intend to "put them to rights," if I have to drive half of them off the place. The Yankee emissaries have not yet been among the negroes, on the river plantations; but we are daily looking for them.

I expect to take my family up to Maury County in this State, in a few days, where they will probably remain till frost, when I expect to make my home till June returns again, on the plantation. As to myself, I must go back and forth through hot weather, mosquitoes, and other discomforts. I know I hazard a great deal; but I have put my hands to the plow, and I must abide my destiny. I shall send my son Kenneth to a military school of high reputation, near Frankfort, Kentucky, on the 1st September, and at the same time, shall put my second daughter to school in Columbia Ten. Sally, according to rumor, has an idea of leaving us, and seeking a home elsewhere. So that, if we live, we shall have only the two little boys with us next Winter. It was a very painful thing to me, and to Susan too, as you may well suppose, to leave the old mansion, in Raleigh. I have spent many happy days there—I loved the spot dearly—and I expected to live and die there. But the Fates ordained otherwise. Yankee cruelty and devastation drove me away. I had no vested means to fall back upon; and the duty I owed to others, required renewed energy and exertion on my part. The *debris* of my fortune consisted mainly of my interests here, and I was compelled to come to them. I have gone to work with the energy and determination of a boy. My health, thank God! is better than it has been for years, and all I can do, is to try and do my duty, and leave the result to a Higher Power. Terrible as was the ordeal of mental suffering, of gloom and despair, through which I passed, yet, I passed through it safely; and I have learn't to submit to what I can not prevent, with resignation, with calmness, and even with hopefulness. Deeply as I have suffered for the poor oppressed and ruined South—I now avoid all reflections upon political questions. I care not who is President, or who is King, if I can be allowed to work and to reap the rewards of my honest labor. You have often heard me speak of my friend Isaac Hilliard, whose plantation adjoined mine in Arkansas. I learn from many quarters, that he has sunk into a morbid melancholy, approaching imbecility, if not mental aberration. I feel deeply pained at hearing it—for he was one of the few men, that I loved. I had thought he had as much genuine *manhood* in him, as any man I ever saw. He was a man of large wealth, before the war, which

he acquired by his own labor and industry. The loss of every thing but his land, followed by the incurring of debt, in order to try and recuperate—and then the loss of two crops in succession—was more than he could bear, it seems.

Well, Judge, if I live, I intend to plant out a large strawberry bed this fall—and an orchard of select fruits (southern seedlings from Augusta, Georgia) next Winter. Possibly under Yankee confiscation, some roguish negro may get the benefit of my labor. Peaches do well in the river bottom—and I think Pears will. Apples I don't think will succeed there. I have already selected a 20 acre wood lot for clover, (which grows most luxuriantly—but which, strange to say, not one planter in twenty has ever sown an acre of. As you know, I am an enthusiast about clover.

Terrible as is the despotism, under which the people of Tennessee are groaning yet, the subject of politics is hardly ever heard spoken of. The only consolation this people seems to have, is—that matters are so bad, they can't be any worse, that change must soon come and that *any* change must bring relief. If half the men in the State could vote, Etheridge would beat Brownlow 20 to 30 thousand votes. But with the present registration, Brownlow must, I suppose succeed by an almost equally large majority.

I can not indulge the hope, that something favorable to the South, may turn up from the Mexican imbroglio. The French and Austrian Emperors will take summary vengeance upon the semi-savages of Mexico, if they are not bullied off by Yankeedom; as bullied off, I think they will be. But *possibly* I may be mistaken in this. Possibly, they may conclude, that outraged royalty must be vindicated, and that they will be bullied by Yankeedom, no longer. One thing I am sure of. Yankeedom will treat any such interference in Mexico, as a *casus belli*. And then, and then, if a conflict ensues, the late bloody revolution will begin to bud—and foliage, and ripe fruit will follow in quick succession! !

My own opinion is, that the Southern breast is so lacerated—so deeply has the iron of oppression pierced the very souls of Southern men—and women—and children too—that if a feasible, practicable door of escape opened, the whole Southern population would depart in one mighty exodus, to a more propitious clime. These sporadic efforts at colonization—to Mexico—to Brazil—to Venezuela—fail for want of means and want of combination. But they still show the current of Southern thought and Southern feeling. France can't conquer, subdue, and hold Mexico, by having to replenish her exhausted regiments 3000 miles off, to be conveyed across the Ocean. But suppose the French, the French Emperor, with his usual sagacity, were to say to the 2 or 3 Hundred Thousand young men in the South, that are now, unhappy beggared, out of employment (because there is really no employment for them)—and weeping over their country's wrongs—

"Come here, and help us to conquer these semi-savages, who don't know the value, and will never develop the resources, of this beautiful land—it shall be yours, you to be our allies, and we to be your protectors and defenders." If he would pursue this course, 100,000 Southern young men would be on the war path, in 30 days. Southern energy would soon find occupation, and Southern industry a field for labor. It would end in the sons coming back for their fathers, and the fathers would go, go with alacrity, as Jacob did to Egypt; and by universal consent, this Southern land of ours would be abandoned to the negroes and their Yankee confreres, and still more odious and detestable Southern Judases, who are daily selling and betraying us, into the hands of our oppressors. This may all be a quixotic dream of mine; but ever since I heard of the shooting of Maximilian, I can't divest myself of the hope, that out of that *imbroglio*, may be eliminated some relief to the South. Still, I fear that this plan, the details of which, I have elaborated in my own mind, will all miscarry, through the dread, which the nations, have of the power of Yankeedom.

My dear Judge, I have written at great length, and I fear I have written a great deal of nonsense. I have written a good deal about myself—but really, I had nothing else to write about. It is time I had stopped. Susan and Sally join me in great love and kindest remembrances, to you and Mrs. Ruffin, and the other members of your family. Don't fail, to give love for all of us, to our kind friend, Mrs. Roulhac. I shall be much pleased to get a letter from you, at some time, when you feel like writing. My address will be Memphis Ten. care of Farrington and Howel.

Hon: Thos. Ruffin

Hillsboro, No. Ca.

*To John K. Ruffin.*¹

HILLSBOROUGH July 8th, 1869.

My dear John.

* * * * *

On the other topic of your letter, I feel almost as deep a concern as on the one just mentioned the one relating to your physical and the other to your moral health. I am glad you had the confidence in me to ask my opinion before you finally acted, or had gone so far as to be in a measure obliged to take the final action, which I should so deeply regret. I have to say at once that I have a very decided opinion—one long settled—in opposition to your views. I cannot enter in this letter, into a detail of all the reasons, which conduce to

¹From papers formerly in the possession of the late Mrs. George P. Collins.

my conclusions. But I am satisfied that such associations as that you mention are perilous to the parties, dangerous to the community, and highly immoral and wrong. You are aware, I presume, that the Legislature at its late session, passed a law making it highly penal and infamous for any person to disguise himself as these persons notoriously do—and you know further, that the Judicial personage, who holds your Court, and would have or assume jurisdiction of any accusation against you, would gladly enforce that enactment when the evidence afforded a plausible pretext, against one who had by birth and education, the connections and character of a gentleman, and let me tell you that there is no reliance on the supposition that the difficulty or want of proof of your participation in the association and conspiracy would afford an assurance of safety and acquittal. In such a body of men, there will almost always be one ready to betray—someone, probably, who would join it for the purpose of betraying. But if not, and all be honest and honorable, the same consequence may follow; for men may be compelled to testify and when they are, if honest, they are compelled by their oath to make implicating disclosures. Furthermore, all such combinations are bound up by oaths as some form of vow touching the purposes and modes of proceeding of the Body, and the several members embracing generally, secrecy and obedience to the orders of superiors. I know nothing of the particular association in question; but I doubt not that their compact embraces these two principles, and if so, it is to be emphatically condemned. I am sure that no man can, after reflection, take, with a good conscience, such an oath, or make such a vow in any form, since it deprives him of the power of judging for himself and places his moral settlements and conduct under the absolute authority of others.

Besides and mainly, the great objection is, that the whole proceeding is against Law and the Civil power of Government and assumes to supersede by taking the power of trying, condemning, and punishing in their own hands. That is a power not to be entrusted to any man or set of men. No man can trust himself with it, much less all those indiscriminately with whom he is associated. Supposing them to have the best intentions in such case; there is danger of mistake from want of a fair, open, and deliberate trial, by a responsible tribunal. But, at all events, it is in every case an attempt to do good by wrong means; a principle, which St. Paul indignantly repelled as “slandrously” imputed to early Christians, and which from that day to this has been no less indignantly denounced by all good men. To do evil that good may come of it, is a horrible heresy in Religion, morals and public polity, even if the good hoped for really resulted. But; in truth, it hardly ever does, but evil almost certainly always follows evil and what was begun in good faith for useful ends, almost ever terminates in gross personal and private injuries. Perhaps at first only bad men are the subjects of the assumed jurisdiction; but it may happen, and after a while,

almost certainly does happen, that good and innocent men become the victims of their arrogant and self constituted tribunals, and gross outrages are perpetrated. It is wrong—all wrong, my son, and I beg you to have nothing to do with it. It is much better that offenders should escape punishment than to attempt to repress crime by such unlawful, presumptuous, and dangerous methods of repression. At best it is committing one crime, to prevent or punish another. I speak thus directly and decisively, because in doing so I am only expressing old and long settled convictions. Keep yourself free to discharge all your duties as a citizen and a Christian man, as the Law of your country and the Law of God may impose them upon you from time to time, and to the end of inspiring the proper resolution to that purpose, just read the scene of the "Temptation in the Wilderness" and study and reflect on it. Having said this much I leave your determination to your own meditations, guided as I hope they will be by Divine enlightenment.

* * * * *

Believe me dear John, to be most affectionately

Your Friend and Father

THOMAS RUFFIN.

From Donald W. Bain.

TREASURY DEPARTMENT.

RALEIGH, Aug. 25th, 1869.

*Hon. Thos. Ruffin
Hillsboro, N. C.*

Owing to the absence of the Treasurer from Raleigh (He having gone home to recruit his health) the reply to your letter of the 16th inst. has been deferred until this date.

It is the desire of the Treasurer that, the interest accruing during the present Fiscal year, on the State debt, be paid out of the revenue of the present year.

Should the taxes be sufficient to meet the interest no discrimination will be made between the different classes of the debt, the interest of which is provided for by law.

At all events, if any be paid, that part which you hold will "come in for a share."

I will take pleasure in giving you such information from time to time as may be of interest to you.

You will remember that the time for settlement by the Sheriffs of the State Taxes, has been extended to the 16th of December next, and

it may be that the entire taxes may not be paid in until late in the Fall, or until the very last week of the time allotted to the Sheriffs.

The Treasurer therefore can make no calculations as to time when payment of interest will be resumed.

Very respectfully,

D. W. BAIN,
Chief Clerk.

From Nathaniel Boyden.

SALISBURY Sept 7/69.

Yours of the 3d instant was handed me, on my return from the Superior Court of Iredell; and in reply I have to say that I only have a copy or two of the reports of 1866, a copy of which, I send under my frank, with this letter. As to the rest, to complete your set, up to this time, it will afford me pleasure in aiding you to obtain them. I think I can readily do this; and I will certainly make the trial. Before the adjournment of the 40th Congress, a resolution was passed, that these reports, and other public documents for distribution, then being published, and not ready for delivery; should belong to, and be delivered to the members of the 40th Congress; but after the assembling of the 41 Congress, a resolution was passed that the members of the 41 Congress should have all these documents, when they were ready for delivery. I had received before the passage of this last resolution some hundred and twenty volumes of the agricultural Reports of 1867; but I had sent off the last one before I left Washington, which I now regret, as I have not a single number for an old and esteemed friend. I regret you had not written to me last winter, for any public document you desired as while there I could and would have sent you all you requested.

Still, I think, through some of my friends I can supply you with those requested. I send you one or two other documents beside the agricultural report. I am not surprised at your dislike of one great change in our judiciary system and laws, as I am utterly disgusted at our new code of civil procedure, (as it is called) and the more I see, and know of it, the more I dislike it. I regard the change as most unfortunate for the people of the State.

My kindest regards to Mrs. Ruffin and to all the members of the family.

Mrs. Boyden is now in pretty good health and apparently as young

active and cheerful as she was twenty years ago and she desires to be kindly remembered to you all.

Hon. Thomas Ruffin

Hillsboro N. C.

I send Impeachment trial Mineral Resources Gen Land Office Report Commerce and Navigation Message and Report —Secretary State etc. five in number.

From John G. Williams.

THE STATE NATIONAL BANK OF RALEIGH

RALEIGH, N. C. Dec. 2, 1869.

Your letter of the 30th is recd and contents noted. The old sixes of State of No. Ca. are quoted in New York at forty one and if you buy I think that would be the best market to buy in. It is impossible for any man to say whether any bonds of this State are a good investment as long as legislation is so reckless and it is certainly hard to form an opinion until one sees what this Legislature will do: we have been promised payment of interest so often and been deceived that no one can form an idea when it will be done.

I send you a N. Y. Herald by this mail and am sorry I can give you no definite advice on the subject of inquiry.

[Address: Hillsboro, N. C.]

Newspaper Clipping.

DEATH OF JUDGE RUFFIN

North Carolina has lost another of her great and good men. Hon. Thomas Ruffin died at his residence in Hillsboro', on Saturday evening, January 15th, in the 83d year of his age. Judge Ruffin lived respected by all, and died full of days and full of honors. The departure from amongst us of such a man, one so intimately connected with the history of our State for the last half century, is severing one of the strongest links that connects us with the North Carolina that was. It is sad indeed to think of such connection being broken; but it must needs be so. "The fathers! where are they!"

We copy from the Raleigh "Sentinel" the following facts relative to the life and services of the illustrious deceased:

Judge Ruffin was a native of Virginia, and was born on the 17th November 1787. He graduated at Princeton in 1805, and read Law with Judge May, in Petersburg, Va., in whose office as Law student, was Gen. Winfield Scott. He read the statute Laws of North Carolina in the office of Judge Murphey, of Orange, where he began the practice of law.

His first appearance in public life was as borough member in the House of Commons, from Hillsboro', in 1813. He was again returned in 1815 and 1816. In the latter year he was elected Judge of the Superior Courts, which position he resigned in 1818. He was appointed to the same position in 1823, and again resigned in 1828. In 1829 he was elected to the Supreme Court Bench, which position he filled usefully to the State and honorably to himself until 1854.¹ He was re-elected Judge of the Supreme Court in 1858, and again resigned in 1859.

He was for many years a Trustee of the University at Chapel Hill, educated his sons there, and took a deep interest in the success and welfare of that once renowned institution.

He has left a large family of children, and grandchildren to mourn their loss.

He was a zealous member of the Episcopal Church, but as he knew there was no cure for difference of opinion in matters of religion, his wisdom, piety, and toleration kept him aloof from religious controversy. If called upon to defend the tenets of his Church, he did it with forcible argument and christian gentleness.

But it is as a jurist and Chief Justice of North Carolina, that his fame has gone abroad in the land, across the great waters. He had given more of character to the Judiciary of North Carolina than any one of the great Judges who have worn its ermine.

In the reports from 1829 to 1859 will be found the written words of his wisdom. Though dead, through these, he will speak to posterity in all ages to come, so long as liberty and letters have an abiding place in the land.

His loss falls not upon his family and kindred alone, but upon the community in which he lived, upon the whole State and humanity itself. We feel, and we have no doubt but all classes and parties feel, that one great link, connecting us with former times, is broken and that we have lost something, as it were, of the dignity and prestige of the Judiciary. "But little of the good and great can die." Chief Justice Ruffin lives and will forever live in the influence which his principles and opinions now exercise and will ever exercise upon the Judicial officers of his country. May we not hope that some older friend, some compeer will give us a more extended notice of his life, character, and service rendered his country.

¹This is of course an error in date.

Extract from a Hillsboro paper.

THE DEATH OF JUDGE RUFFIN
(Communicated.)

The Hon. Thomas Ruffin departed this life at his residence on the 15th inst., in the eighty third year of his age, after a short and painful attack of Pneumonia. He yielded to his fate with patience and firmness of a man and the humble resignation of a christian. Amid his great sufferings he was surrounded by an anxious and affectionate family, who bestowed upon him the most devoted and untiring attentions. The wonted and thoughtful courtesy of the gentleman—the fondness of the father—the affection of the husband—was beautiful and conspicuous during the whole course of his illness. He retained a polite acknowledgement for every attention he received; the ordinary salutations to his friends and the greetings of his affections to his family were never omitted; the family altar was erected in his sick chamber and the blessing of God invoked in the morning and evening sacrifices of thanksgiving and praise. His death has left a sad and mournful gap in the social and domestic circle exhibited in the deep gloom of the community and their sincere sympathy for his afflicted family. It is unnecessary to speak of him as an eminent lawyer, and an upright and learned Judge—the records of this and other countries attest his rightful claim to these distinctions.

He was a kind and generous neighbor, eminently wise and practical in all the affairs of life, and thorough in his efforts to accomplish objects of benevolence and usefulness, and to dispense an old fashioned hospitality with a cordial and bounteous hand without that ostentation which dazzles the eye but does not touch the heart. He was industrious: with regular habits formed in the interest of virtue and wisdom which were productive of comfort, happiness and success.

AS A JUDGE AND GENTLEMAN.

When he was engaged in the practice of the law it was his habit never to leave the court until its adjournment, and when he presided as judge of the Superior Court, he never adjourned it until night—devoting his whole time to the service of the State and dispatching a large amount of business.

He was never an old man in the sense of decrepitude, reticence or gloom. He was active in his movements and cheerful in his disposition. He walked half a mile to church; devoted much time and attention to his garden—which abounded in fruit and vegetables and was graced with a fine array of beautiful flowers. He was actively engaged in all the duties of life up to the day of his attack. He was ever in full and tender sympathy with childhood; cordial, pleasant and social with the

young, and an instructive and entertaining companion to his friends, and in all the endearments and duties of domestic life he was a model of excellence and admiration—which found a ready and appreciative echo in the love and veneration of his family.

HIS DYING HOUR.

It was the cherished wish of his life that God would bless him with the possession of his mental faculties in his dying hour. This boon was granted. His mind was unclouded, and his last act of intelligence, fifteen minutes before he expired, was a tender and unmistakable manifestation of love for his noble wife.

Judge Ruffin was an old school gentleman, and is among the last on that honored list of names which graced and adorned the olden time. The modern changes, with their startling and reckless progress—the recent phases of government—the new interpretations of the law and the constitution, were abhorrent to all his well considered ideas of legal prosperity and long established standards of right. The law, as he and his fathers in their wisdom and purity administered it, was the shield of glory and safety of the land. Their learned and pure exposition of the constitution was the recognized and fixed conviction of its true meaning, and imparted to it that reverence due to the sacred character of American liberty. He is not only a loss to his family and friends but to the whole country. In his death a bright barrier has been removed to that baneful and modern progress, which, in its heedless and mad career, has unsettled the very foundations of constitutional liberty. May the example of his life, the truth of his opinions, and the conservative character of his principles, prove a voice, speaking from the tomb for the good of his country and the happiness of mankind.

From John K. Ruffin to William K. Ruffin.

GRAHAM Aug. 23rd 70.

My dear Brother

Had I been able to get the desired information about the wheat I should have answered your letter long ago. And I now write without it, lest you should think my silence mere negligence. Mr. Bason told me soon after the reception of yr. first letter that it had not been threshed; nor had it been the last time I saw him, which has been probably ten days ago. This is accounted for by Kirk's special antipathy to machines and their operators. Five entire concerns were arrested in the Haw Fields. He told me however that there would be but little of it—only between 20 and 30 bushels he supposed. He

also mentioned that the corn crop on the place was very fine and that he thought Mama's share would amount to sixty or seventy five barrels, and desired I should enquire what disposition should be made of it when gathered as his cribs would be filled with his own; and consequently he would have no place to put it, if it was desired that he should keep it, without building.

We still have the "State Troops" upon us and no indications of their early departure. No new arrests have been made during the past week, and last night *all* the prisoners that were in close confinement were carried to Raleigh before Judge Brooks. Kirk and Bergen went with them and it is hoped and believed they will never return but will be arrested and imprisoned. God grant that it may be so, for they have proved themselves willing and infamous tools in the hands of their usurping master. The privates considering the example set by superior officers and the entire absence of discipline and punishments among them, have behaved better than I expected. I have no complaint to make of any of the concern however. For while I sympathize with the personal inconvenience of those whom they have oppressed, I rejoice at the good effect the movement has had throughout the State, and the Union. It has effectually rid us, I trust, of the Scoundrels, and rogues whom circumstances have placed in power in the State, and will allow the good men of the country once more to have a voice in the government. I do not regret Holden's military movement, on the contrary, I rejoice at it as having more effectually broken up radical rule in N. C. than anything the wisdom of the Conservative party could have devised.

I hear nothing definite from Tom, but indirectly that he is no better. If you have any late news from him I wish you would communicate it. Give my best love and a Kiss to Mama and Kate and an affectionate remembrance to the balance of the household.

Your affectionate brother

JOHN K. RUFFIN.

*From Frank G. Ruffin to Paul C. Cameron.*¹

SUMMER HILL, VA.

June 1, 1870.

Hon. Paul Carrington Cameron
Hillsboro, N. C.

My dear Sir:—

I received your letter last Saturday night, and at once began a reply, but I found out it would be better to write to my kinsman, Mr. Edmund Ruffin of Marlbourne, and was waiting for his mail day to come around

¹Paul C. Cameron had written Frank G. Ruffin for information as to the Ruffin family to aid Governor Graham in the preparation of his memorial address. See Vol. 1, pp. 19-34.

when he and his wife, my dear cousin Jane, drove up on a visit and remained overnight. Yesterday, my sons Jeff and George and my daughter went to "The Memorial day" as they call the *frolic* they have over Confederate graves; and I had to take George's place with the freedmen, and hence was unable to write.

After which explanation of a seeming want of promptness, and willingness to aid you and Gov. Graham, I come to the subject of your letter, regretting that I have so few details to furnish, but hoping that Mr. P. B. Ruffin's examination into his father's papers may, in some sort, supplement my deficiencies.

I have seen Mr. E. Ruffin Sr's genealogical chart, and remember that I found myself the seventh in descent from the head of the family, as he was compelled to assume him to be; though *he* was a native, and had accumulated an immense landed property on the South side of James River by importing laborers into the country, that sort of service being at that time remunerated by a grant of so much land per capita.

As early as 1743, "Captain John Ruffin" of Surry was a large planter. The family have generally remained on the South side of James River. But Judge Ruffin's grandfather, Col. Robert Ruffin, (who in 1762 was appointed along with Robert Bolling, Roger Atkinson, William Eaton, John Banister, Thomas Jones, Henry Walker, George Turnbull, and James Field—all represented by Virginia and North Carolina families to this day—to lay off the town of Petersburg, and was designated by the act as a *gentleman*, at a time when that term had sense and meaning in it), Col. Robert removed to King William County and occupied the Brick Mansion Sweet Hall on the Pamunkey about ten miles above—not West Point, but West's Point after one of our earliest settlers. Sweet Hall, as I knew it in its decay forty years ago, had still enough left of its grounds and surroundings to argue the means, taste and habits of a gentleman in its owner; as a ruined, but distinct dike which had once reclaimed a very extensive marsh on his large tract of land on the opposite shore of New Kent, showed what must have been his energy and enterprize.

Besides these he also owned another large tract in the immediate neighborhood of Sweet Hall in King William, "Turcoman" which subsequently became the property of his son Sterling, and a very large body of very fine land in the County of Brunswick.

He married the widow Lightfoot, of the Sandy Point Lightfoots, who was born "Clack," and was, as old Mr. John Roane who knew her, frequently told me, a very beautiful woman, and who had consumption for fifty years, as I learned from Judge Ruffin, who spent much of his childhood with her.

They had four children, a daughter, (who married a Claiborne, one of the oldest colonial names, and left one son Sterling Claiborne, who was probably as able a lawyer as the Judge himself, and altogether a very remarkable man), and there was James, William and Sterling.

James was a captain of calvary throughout the War of the Revolution. He settled in King William, married Mary the daughter of John Roane, *Maximus Natu* of "Uppowoc," on the Mattaponi, in the same county, and died at a comparatively early age having a large family of children. He was a man of parts and of very high courage, but of extremely idle habits. Most of his children died in early manhood, and only one of them was a really prosperous man. He immigrated early to Tennessee and thence to Mississippi, and dying bequeathed to his children his large property, and the heredity taint of consumption.

Of Mr. Sterling Ruffin I can tell you not half as much as you probably know. He had been dead some years before I came from Mississippi to Raleigh in 1824. His wife Alice was the daughter of Thomas Roane of Newington in the County of King and Queen on the North bank of the Mattaponi about three miles below Manapike where a blessed bullet killed Dalgren in 1863.

My grandfather, William Ruffin, a volunteer aged sixteen at the siege of Yorktown, married Margaret Ritchie, daughter of Margaret Roane, sister of the two brothers above named, engaged in Commerce at Fredericksburg with Hugh Campbell, who had married a daughter of Thomas Roane, and was so crippled in the business that he had to draw out. He and his brother Sterling subsequently left that part of Virginia and moved to Brunswick, where joining the Methodist Church they became most intimate, (and continued so until death), with the fathers respectively of George A. Drumgoole and the Gholsons.

From Brunswick they moved to North Carolina, as you know. They had both been gay men, but they became very devout, and gave up as many of this world's vanities as most persons of their persuasion; though neither of them could surrender blooded horses as entirely as Bishop Ravenscroft did—possibly because they had obtained a dispensation from the circuit riders;—and my uncle Sterling bequeathed his to his son, in whose family I hope they still remain.

These two brothers were as you know, devotedly attached to each other, and Judge Ruffin once told me, in proof of the fact, that his father, when dying, grasped my grandfather's hand exclaiming: "twin brothers; brothers by nature, and brothers in faith." They were both in earnest. The late Gov. Morehead of your state told me that he had heard my uncle Sterling "Exhort," with the usual gesticulations of his sect, until he would sit down thoroughly exhausted panting and wet with perspiration. "He was a powerful man very much of the figure and face of my brother James, bowlegs included," Judge Ruffin once said to me. My grandfather, from a defective physique perhaps—he was never robust, and for many years suffered greatly from rheumatism—or possibly from other causes, was less demonstrative and exhortatory. He died when I was in my ninth year, so I remember but very little of him. But I have always heard, and from several sources, that he had fine conversational powers. At a dinner given to

Mr. Thomas Ritchie in Essex, his native county, in 1840, I heard that gentleman declare that whether his political principles were good or bad, he was more indebted for them, both in depth and clearness of conviction, to his brother-in-law William Ruffin than to any other man. Judge Ruffin told me that he was a man of fine intellect and excellent business capacity, who would have prospered in life, but for the uncontrollable extravagance of his wife.

Like many, or rather, most youths of his period, his education was defective, owing to the derangements of the war; but, at the age of sixty-six he retained enough of his Latin to superintend the preparation of my daily tasks for Dr. McPheeters; always preceded by the Lord's Prayer, repeated between his knees; and to him and the late Wm. Bingham of Orange I owed such proficiency that I took my Latin degree at the University of Virginia when I was but little over sixteen years old.

Of another branch of the family, the founder in this country, was Edmund Ruffin, great-grandfather of the distinguished agriculturist of that name. He was a carpenter and made a large fortune, more, as his great-grandson used to say, than his son and grandson could spend in their short lives—they each died of gout at forty-three. I do not suppose him to have lost caste by his trade; for in the manners of that time, arbitrary and capricious there as always, a gentleman no more came to be such by following a trade, than did a Scotch Cameron by stealing cattle, or a Ruthven by attempting to kidnap a king. Archibald Harwood of King and Queen, a first cousin of Judge Ruffin, through his mother, was made a Coach Maker "because," as the old Lady told me, "he would not learn his book, and she was resolved he should not grow up in idleness." And Arthur Brockenbrough, son of Dr. Brockenbrough who married a *Roane*, aunt of Judge Ruffin, was a carpenter—made such because he was not bright at letters—and was the superintendent of all the Carpenters' work done upon the University of Virginia. All honor to their sensible parents.

It was the son of that Ruffin, the carpenter, and the grand-father of Ed Ruffin, Sr., as we knew him, who was a member of the convention called to consider the adoption of the Federal Constitution and who on the 25th of June, 1788, voted *against* the ratification of that instrument along with Patrick Henry, the orator of Virginia, and with Theoderick Bland, his own colleague, Stephens Thompson Mason, William Grayson, George Mann, James Monroe, Benjamin Harrison, John Tyler, *Thomas Roane*, and others; for which we owe them all our everlasting thanks.

"It was that fatal and perfidious bark,
Built in the eclipse and rigged with curses dark,
That brought so low that reverend head of thine!"

For more than a year afterwards, your own state held out against the adoption; and I can never praise her too highly for it.

This gentleman and his descendants resided on the south side of James River below the head of tide, and had all the characteristics of the people among whom they were brought up. There are other branches of the same family in the same region of whom I knew but little; though they are not remotely allied to me. They all, however, occupy the status of gentlemen in their respective communities.

The traditions of our settlement here vary. One account is that our first ancestor was a parson of the English Establishment. Another, somewhat more ambitious, is that we are a part of the family of the Ruthvens of Perthshire in Scotland, who attained and driven into exile into France, returned to England on the revocation of the Edict of Nantes, whence some members of the family migrated to this country. I have no means to decide this point, nor to tell whether we are of the Noble or Scullion Branch of the family—whether we are descended from gentlemen, or whether

“Our ancient but ignoble blood
Has crept through scoundrels ever since the flood.”

Your request that I will state the characteristics of the family involves me in some difficulty and more delicacy, as the people were of my own blood, and from what I knew of them, somewhat mixed in their characteristics. They have been within my range of observation pretty thorough-going men, whether their leaning was to business or pleasure; and I have seen a good many instances of these extremes.

They were almost universally high spirited, high tempered, quick to take and resent offense, but placable, except when their personal dignity was invaded or even threatened; when, though not relentless, they were unforgiving. They have not generally been obtrusive, of their opinions though tenacious of them, and have been too independent and outspoken to make politicians, though they have generally possessed that manliness of bearing and that geniality of manner which have given them the sort of popularity which is based on respect and good will. They have always relished rural pursuits; and my father, (who went to Mississippi by the advice of Judge Ruffin, very early in the present century, and landed at Fort Adams with his forty dollars and two shirts in his saddle bags), is the only one of the name I have ever heard of who had made a fortune by trade. He got out of it, as soon as he could, and went to planting cotton and raising horses and cattle in Wilkinson County. Further than this I do not know that they have peculiarities which separate them very widely from their fellow citizens.

If it is worth while after I hear from Mr. Edmund Ruffin, I will add to this meagre sketch.

And now for the *Roanes*. I knew John Roane, Jr. well. He died at “Uppowoc” in King William, his patrimony, in 1838. age 72. He was a living encyclopedia of Virginia pedigrees for men and

horses. He told me that the earliest ancestor of his family that he had ever heard of was hung in Bacon's (my wife, through her great-grandmother, a Burwell, has the honour to be a relation of Bacon, who was first cousin to the first wife of Lewis Burwell of Carter's Creek in Gloucester County), Rebellion (1676) in the Dragon Swamp with a grape vine, a fact of which he was so proud, as to say that he was the only man he knew, who was glad to trace his descent from the gallows. His own grandfather, he said, had started in the Northern neck of Virginia, "an overseer with a check shirt." If so, he must have been a man of considerable force of character, as his children all married well.

That Roane, the overseer, left children, Col. Wm. Roane (the clerk of Essex County, whose fine, bold, old fashioned Washington style of handwriting I have frequently seen and admired). Thomas Roane of Newington in the County of King and Queen of the North Bank of the Mottaponi; John Roane, *Max: Natu* of "Uppowoc" in the County of King William on the South bank of the Mattaponi; one daughter, Molly, who was married to Archibald Ritchie, a Scotch merchant of Tappahannock, and another, Sarah, who was married to Dr. John Brockenbrough, the elder, also of Tappahannock, and Lucy who married first Richard Barnes, second Thomas Fauntleroy Brockenbrough.

The three brothers lived about twenty miles apart, almost at the three corners of a triangle, each on a large tract of land, and each owning other large detached tracts. Some one once asked one of them, why, considering their very great attachment to each other, they had not settled close together; and the reply was sensible and characteristic: "It is precisely because of our attachment to each other, and our wish to preserve it, that we have separated, upon full deliberation, and gone so far off that when we meet at each other's houses it will be as brothers and guests. Brothers should never join fences; for if *they* should agree, as is not very likely, their wives and children might not; and if *we* quarrel there will be the devil to pay."

They were too old to take an active part in the field during the Revolutionary War, but they kept things straight at home, and carried on generally with a pretty high hand. Col. Wm. Roane would get into politics, and then he was pretty rough on the Tories. Once, to punish one of them for some offence, he had him bound hand and foot, stripped naked, and laid on the margin of a swamp for the mosquitoes to bite. The next morning to their horror the poor man was dead. An old lady, who remembered him well, told me that one of the patriotic songs she used to sing with other young whigs of both sexes contained this refrain—all she could recollect:

"When side by side, Col. Will Roane tied
A negro and a Tory."

Matched, or mismatched, in that style, he used to drive them before him and his retainers up and down the streets of Tappahannock. But once he met his match, in the person of his sister, Mrs. Ritchie, my great grand-mother. Her husband, a native Scotchman, was suspected of Tory proclivities, and his wife's brothers had somehow got him into his garden, and were about to inflict some indignity upon him, when she appeared with a carving knife in hand, and compelled them to desist on the threat of plunging the knife into the bosom of the first one that should attempt to degrade her husband.

John Roane was not less zealous and prompt than his brother William in support and aid of the cause of the Revolution, of which let this instance be cited in proof. At that time and for years afterwards, every gentleman considered himself bound to dine at the Court House Tavern on public days, and John Roane had taken his seat for that purpose at one King William Court. Exactly opposite to him sat two persons, one of whom was a public man suspected by some persons of secret Tory sympathies; and the other, a bolder man, was more openly disaffected to the American Cause. John Roane had just poured out a glass of wine and sent the servant with the bottle to a gentleman at the upper end of the table with an invitation to drink with him, and was watching to catch his eye, when he caught the sound of some treasonable remark made by the Tory to the pseudo Whig. At that moment he bowed, merely sipped his glass to his friend, and then staved it at the head of the Tory; but it missed him and struck the other on the ear emptying its contents therein. Instantly springing to his feet he addressed them both with the expression: "badly aimed; but d——d well hit." He was never in public life, I believe, farther than to act as justice of the peace.

Thomas Roane was a less turbulent man, than either of the others, but was equally determined, and a man of great personal strength as the others were. But he had a rather squeaky voice, which on one occasion misled a gentleman to his cost. He was at the time member of the Senate of Virginia and had given a vote which greatly displeased a leading gentleman and a man of virulent and arbitrary temper on the other side. When the body adjourned this gentleman, whose measure had failed, was very violent in abuse of several of his opponents; who, as he was known to be a very powerful man and a great fighter, took it rather quietly. Just as they were descending the stairs he overtook Thos. Roane with the expression "and you, too, d——n you," when Roane seized him by the coat collar, whirled him over the banister, and keeping him suspended, remarked in his small voice: "One more word and I'll let you drop to the bottom. I'll teach you how to curse your equals." The gentleman for once in his life was prudent and saved his bones by holding his tongue. He was several times, I think, in public life as a member of the Legislature, and was, as I have intimated, in the

Convention voted against the adoption of the Constitution of the United States. Besides his farm at Newington he had other and large estates in King and Queen, Essex and Middlesex, and was a very successful manager of his property. Though his hospitality was bounded only by the size of his house; and that contained fifty-four beds, which were all filled once a month—King and Queen Court House was only two miles distant—and many of them occupied at other times; and though he had eight (certainly nine, and probably ten) children, yet he gave them all estates; some as much as 1,500 acres of land. Of his daughters, Alice was married to Sterling Ruffin, Katherine to my uncle Archy Ruffin, Martha to my great-uncle Archibald Ritchie, brother of Thomas, Lucy to Mr. Edwin Upshur, and Margaret, or Peggy, first to Mr. Harwood and afterwards to Mr. Thos. Garnett, the father of Col. H. T., Jno. R., and James Garnett. Of his sons, John came to a very unfortunate end; Sam, a very amiable but weak man died early, and Thos. (Tom Roane of the Forge as he was called, after the name of his (farm), died in the prime of his life universally bewailed by his county men, who rode, some of them more than fifty miles, to proffer aid and show their interest in him. Wm. H. Roane has told me that he was the finest fellow he had ever known, the most engaging and the most universally beloved. The same qualities he transmitted to his son Thomas Roane of King William, my very, very dear friend, who though anchored by rheumatism at ten years of age, and thenceforward unable to walk, or even to sit upright, yet bore his misfortune with such uncomplaining, manly, cheerful, happy fortitude, and manifested such marvelous energy in the management of his small property, such eager concern in public affairs—he was an ardent and untiring Whig against overwhelming odds,—such lively sympathy in the trials and triumphs of his personal friends, such love of right and such scorn of wrong as won him the love of all good, and homage of the bad men. I never heard a harsh word spoken of him.

The sons of John Roane Jr. of Uppowoc were not distinguished but John Roane, Jr. himself, I always thought, was one of the most remarkable men I ever knew. He was of square, massive stature, broad shouldered, lank, full muscled, with a face to match, blue eyes, brown waving stiff hair, short and combed straight back, a la Methodist, a full, broad and deeply transverse wrinkled forehead, most prominent midway between the eyes and hair, with a Grecian nose slightly depressed, at the bridge, with lips meeting exactly and firmly over his teeth, and a chin square, lean and slightly curved upwards, he looked to me, to be the very impersonation of force. He might, if he had chosen, have made a much greater mark than he did, but he had early acquired the influence he possessed in his county, had a hot and arbitrary temper, which had never been checked among his own people, and he had become too fixed in his habit of impatience to conciliate opposition or trust himself in legislative debate. He had become a petty Monarch when he had the

intellectual scope of an Emperor. But he was great on the hustings. When I first recollect, stump speaking as we call it, (and which Cicero says destroyed the liberties of Greece, as Longinus says it destroyed the liberties of Rome), and after them I take the liberty to say it has gone far to destroy the liberties of the United States, had not so far usurped the place of conversational discussion as it has since done; and I have often seen rival candidates confront each other on the court green as game cocks in the pit, surrounded by their friends, and each applauded as he drove his gaffs into the other. So apt was he, by nature, and so expert by practice, in this kind of degladiation, that in course of time, he had no competitors, and always walked over the course when he chose to go into public life. Yet his language, never elegant, or refined, was common, often times even to vulgarity. But it was always clear, full of homely illustrations which everybody could understand, and of proverbs which all could apply, and like Patrick Henry's, whose reputation Mr. Wirt has injured by trying to brighten it, it was pressed into the hearts of his auditors by a dramatic force which could not be resisted. Giants do not fight with the polished weapons of fencing masters but with huge crushing rocks.

Once during the War of 1812 he beat John Taylor of Caroline for Congress; and in one of the conflicts at the Bowling Green, Taylor's own stronghold, Taylor, who opposed the war, said: "But, Mr. Roane, the taxes sir, the taxes!"

"Well Sir, the taxes, what of them? I do not fear taxes, nor the people. They want freedom; they don't want money."

"How high would you tax for this war?" "I would tax them, sir ten cents in the dollar." "Suppose, sir, that would be insufficient." "Then, sir, I would tax them twenty cents in the dollar." "But suppose they would not stand it." "Then, sir, I would not ask them. I would tax them thirty, forty, fifty, sixty, seventy, eighty, ninety, one hundred cents in the dollar; Col. Taylor, I would tax the shirts off the people's backs and make them free, whether they would or not. What is your next bugbear?"

The effect was electric.

Compare the only sentence I have ever heard from Patrick Henry's speech in the Parson's case—"Such is the avarice, such the insatiate thirst for gold of these ecclesiastical harpies, that they would snatch the last hoe cake from the widow and the orphan, and grab the last blanket from the lying in woman."

Like his uncle William, he occasionally got into frolics. On such an occasion, returning one dark night from court, when he had become exasperated with the Federalists, he overtook a pedestrian and asked his name. "John Adams," was the reply. "Well," said he dismounting, "I shall give you a thrashing." "Why what for Mr. Roane; you know *me*, Jack Adams, who lives on your land." "NO sir; you said John Adams; you made yourself a federalist; now you must take the

consequences," and then and there he thrashed him with his horse whip. Yet his man, whom I knew very well, a harmless, inoffensive, worthless creature had been his tenant for many years, and so continued to his death, rent free.

He was public spirited within his own territory, a very kind neighbor to those who tried to help themselves, the most indulgent despot to his slaves I ever knew—I have known him to feed them all on green peas smeared with butter for days at a time—a tender, but most capricious father, devoted to thoroughbred horses, (he despised professional racers, rating them much below their horses), and to agriculture and horticulture, with more hobbies than any man I ever saw.

He was warm in his friendships, inveterate in his prejudices. I think his model of a public man was Nat Macon. He was always intimate with him. He also was very fond of John Randolph, whom he had known at the Grammar school, when he himself was a student at Williamsburg, and who, he told me, was the most beautiful and attractive boy he had ever seen. He was also a great admirer of the late John Wickham whom he appreciated and tolerated in spite of his supposed Royalist sentiments. He was in Richmond when the late President Tyler was elected by an intrigue to the Senate of the United States over John Randolph. It infuriated him, and he declared publicly that he could not be the son of old John Tyler, but was a bastard. Randolph is supposed to have heard of it, for, a short time after, he drank a toast at a dinner given him by his friend in Richmond: "Virginia, The man who prefers his own advancement to her welfare, is no true son of hers, but is a bastard."

He was never in the Senate of the United States, but he was often a member of the Legislature, going there or to Congress whenever he chose. He was also a member of the Virginia Convention of 1829. His strong sense, his fine logical powers, his remarkable consistency, his boldness, his splendid conversational powers, always gave him great influence in every deliberative body.

I never saw him dressed but in homespun of his own manufacture, nor in a carriage but of his own making, (the non descript affair of the kind that I remember, he never called anything else than "*The thing*") nor with horses but of his own raising. He had but one carpet in his house, calling them "dirt hidens." He had a fine set of china, but his favorite table service was of pewter. "His father," he said, "had been satisfied with that." His table was the most abundantly supplied, and the best—not the richest—I ever saw. He used honey whenever he could as a substitute for sugar, because he said sugar was protected by the Tariff. But I find I am becoming garrulous about this grand old original, and go to the next prominent member of the family, Judge Spencer Roane, son of Col. William Roane the clerk of Essex. His character was as strongly marked as his Cousin John's, but he had fewer detracting peculiarities, owing to very different early

association. Called to the bar very early, he gained his first cause against his preceptor, the celebrated "Lawyer Warden," who said, when twitted with it, "Oh! I taught the boy to speak," and rose rapidly in reputation. He went into the Legislature as soon as his age permitted, took part in the debate the day of his admission and rose so rapidly in favor and public repute that he was made Judge at the age of 26 or 27. He remained on the bench until his death in the 63rd year of his age, dying of a disease contracted by neglecting a tooth whilst he was engaged in a very exciting case I think against Treasurer Preston. Of his career as judge I am not fitted to speak. Of the part he took in politics, there is now no record except in the files of the Enquirer, and in very dim tradition. At the time when that paper was the most influential in the Union, he was its guiding spirit, and contributed largely to its Columns in brief paragraphs or in more elaborate essays. His residence was the headquarters of the famous "Richmond Junto," and the resort of all members of the Legislature of his own faith. His influence in his party was second only to Mr. Jefferson's, and was willingly subordinated to his, by himself.

He was in person more than six feet high, and though rather thin, was very strong, and so active that when a young man he could walk under a bar that touched his head, and turn round and leap it. His hair was light brown, his eyes—he was near sighted—a very light grey, rather sleepy looking in repose, his nose and chin like John Roane's, his forehead not so full, broad or expansive. He was a man of social, though strictly temperate habits, especially fond, as was John Roane, of young company and jocularly, good tempered in the main, but choleric, and very violent when roused, and a strong partisan. He had a quarrel with Judge Tucker, the elder, whose pedantry and pretention he despised. On one occasion he was in the parlour with Gov. Nicholas, when Judge Tucker, who had been shown in unannounced, retired as soon as he saw Judge Roane. He sprang to the door, but Mr. Patterson, Gov. Nicholas' son-in-law, who happened to be just at it, closed and locked it anticipating mischief from the Judge's countenance. "Why what is the matter?" said the Governor, a man of very singular calmness and self-control. "Does he take me," was the reply, "does he take me for a d—d infected villain that he cannot enter a gentleman's house when I am there?"

His first wife was the daughter of Patrick Henry, who said, when Judge Roane asked his consent to the Union: "Sir, you do me honour." She died a maniac, leaving several children, all of whom except one who died early—a young man of great promise—inherited more or less of her malady. His second wife was the daughter of Col. Hoskins, a wealthy gentleman of King and Queen. By her he had one daughter who was married first to my uncle Albert and then to Gov. McDonald, afterwards chief justice of Georgia. She adopted and brought me up; and was the only mother I ever knew. His son, William H. Roane, by

his first wife, was in Congress in 1816, nearly as soon as he was old enough to go, John Roane having retired in his favour. He served one term only, when he was defeated, and was elected immediately a councillor of State. That office he held for several years, when he removed to his patrimony, Spring Garden on the Pamunkey, in Hanover, a few years after his father's decease, whence he was sent almost immediately to the Legislature. But in a few years he came back to Richmond, and was shortly thereafter elected to the Senate of the United States. Failing health induced his retirement, and settling down at his beautiful residence and estate, Tree Hill, about three miles below Richmond, which he had bought in 1838, he expired in 1845, in the fifty-seventh year of his age. I knew him well and loved him dearly. His talents, though of high order, had never been systematically improved; for in early life, when habits are formed, his health was so exceedingly delicate that study or even continued residence in one place was impossible. But he had lived much in the world, had been everywhere; but especially at his father's house, the most intellectual men of Virginia gathered and had studied in that school as the Athenians did in the Porch of the Academy. Such oral instruction as he had received, so he communicated, *con amore*, to many a delighted companion, or more youthful disciple.

An old member of the Legislature, a plain man, of strong sense, and wide observation in Virginia, once told me he had seen a good many abler men in public life than Wm. Roane, but never as honest a one. I thought the remark eminently just. He had a decided dash of eloquence of his grand-father, and was filled with the peculiarities of the Roanes, high spirited, soft hearted, strong minded, generous, impulsive, but with all their rough traits, softened down by a more extended intercourse with the world.

The wife of Col. William Roane was a Miss Ball of the Northern Neck, and her mother was a *Spencer*, two of the oldest names in the colony; and one of them, Ball, the maiden name of that *hard*, masculine, strong minded, Christian woman, Mary Ball, the mother of Gen'l Washington, whom sentimentalists love to compare in attributes with the Virgin Mary. I expect that she was a near cousin of Judge Roane, though the family never claimed the relationship, and I never heard them allude to it.

The wife of Thomas Roane of Newington, was, I think, a Miss Hopkins, of most reputable family.

John Roane of Uppowac married, I believe, a Latané of a Huguenot family, from whom was descended Capt. Latané that was killed in the late war near Capt. Wm. Newton's, as is represented in a picture by Artist Washington, full of tenderness and beauty and *imagination*.

Alice Roane was first cousin to John Roane, Jr., to Judge Spencer Roane, to Dr. John Brockenbrough, to Judge William Brockenbrough of the Supreme Court of Virginia, to Thomas Ritchie, to Col. Archi-

bald Ritchie, likewise her brother-in-law, for many years a leading man in Essex, and the hottest and most ill-tempered man I ever knew, if he *was* my uncle; but a man of great pluck and force of character; and to Capt. John Ritchie, who so far retrieved an ill spent and dissolute life by a heroic death on the field of battle in Canada in the last British War, that the General Assembly several years afterwards voted a commemorative sword to his oldest surviving brother. She was also second cousin to Wm. H. Roane, and to Judge John W. Brockenbrough of Lexington, son of Judge William, who up to the war was judge of the Western District of Virginia. She was thus of near kin to several persons, who in their day were among the most distinguished men of the State. They were men of like descent with Henry, Washington, Jefferson, the Masons, Madison, Monroe and Marshall and Giles, sprung from the great middle classes, the fruitful source of civic worth and popular honour. They had fortified by congenial marriages, based on higher sentiments than interest, the footing they had won among their fellow citizens. With the faults incident to strongly marked characters, and peculiar to the times, in which they lived, with a good deal especially of the character that Sallust ascribes to his countrymen—*parcere victis sed debellare superbos*—they yet had virtue enough to win and retain the regard of the great body of the people and to attain patrician eminence without seeking patrician aid or alliance—some of them in spite of it—because the great body of the people knew by true instinct that they had the sympathy of these men who were too wise, honest, brave and proud to betray or wrong them intentionally.

All this is changed now, their families are scattered almost indistinguishably, or absorbed, into others; their fortunes shivered into fragments by the Statute of distributions; and their influence, if not wholly gone, is not more perceptible than the dying ripple on the vast surface of public opinion.

It is well for them they are not here. Under the silent operation of a revolution preceding the war, and greater than arms have wrought, "The People," whom Edmund Burke defines as "They of adult age, not declining in life, of tolerable leisure for such discussions, and of some means of information, more or less, and who are above menial dependence, (or what virtually is such)" . . . "the People" have become the adult males of every community. This would not have suited these Coriolani. They would not indeed, if here, seek to smite the people who walk the earth on which they first drew breath. For this, they would see, would only make speedier room for the Yankees and the Yankees and Yankee whelps. But their great hearts would break with grief and disappointment to see grand ideas of liberty so woefully perverted. Happy patriots, to have died before their idol was shattered, or their dreams disturbed.

With best wishes for you and yours

Very sincerely your friend

FRANK GILDART RUFFIN.

SELECTIONS FROM THE WRITINGS OF THOMAS RUFFIN

INAUGURAL AS PRESIDENT OF THE WHIG SOCIETY¹

*Thomas Ruffin's inaugural speech when he took the seat of President
of the Whig society Aug^t 27*

It is unnecessary my Fellow Whigs for me to enter into a long and elaborate preface as expressive of my gratitude to you for the office which I now hold, nor is it requisite that I should inform you of the consciousness of my inability to perform with precise rectitude and exactness the duties annexed to this seat; since you all know how arduous a task it is to please all and how subject we are to err; how great the undertaking of such a task is to a person so inexperienced in such performances as myself. Rely, however, on my word and promise that these duties shall be discharged with as much exactness as the strongest endeavours can render me capable of exercising.

Most of you, perhaps, may think it useless for me to speak of the late lamentable situation of this society; since it has so often been thundered into our ears, and subjects of settled and unanimous persuasion you may deem it superfluous to treat. I, too, had I observed among ourselves a persevering adherence to just sentiment, and a regularity of correspondent practice, should have spared myself the trouble, as being unnecessary of enforcing with earnestness plain and acknowledged truths. But when I discover the sources of our situation to be derived less from an ignorance of right and wrong than from a violation of moral precepts and a deviation from our convictions; great utility must arise in my opinion, from a frequent refreshment of the memory by the words of exhortation; that we may conform our conduct to propriety and substantiate the truth by action. You all know that we have long (and it is with the deepest and most sincere regret that I say it) been overwhelmed by all the horrors of remissness and a disgraceful relaxation. Look into your minutes! Behold them composed of fines for the neglect of exercises the most improving; for absences from society, a constant attendance of which is so beneficial, and for improprieties which tended to the dissolution of this respectable body; and certain am I that its dissolution would have been inevitable had they not been checked by those who have lately held this chair. To the last Censor together with his council you owe much, to them you are indebted for the check (and I hope the entire stop) of many evils; but to yourselves

¹From a small pocket note book found in Thomas Ruffin's papers.

you owe most; by your prudence, virtue and endeavours the tutelary saint of this Society again appears to protect it; again its sun begins to show itself through the clouds which languor had produced and which darkened our hall. Yes already do I see the dispenser of light shoot his radiance through every part of these walls. Persevere my Fellow-Whigs, in the course which you at present pursue and now you will be fast approaching the Meridian of Glory from which you have fallen and now you will have reached it never again to depart.

To speaking you should attend particularly. It is needless that I should tell you that you are defective and what are the causes of this defect; since you must all know them. The importance of this exercise claims to itself much more attention than you have lately given it; for what inspires a man with more confidence in time of danger than a consciousness of his talents as an orator? Who is more effectual in laying prostrate and chastising the injurious and arrogant? Who is more capable of repressing intemperate desires? Whose admonitions do we receive with more submissive patience than those of the monitor by whose eloquence we are enraptured? Can you then bestow too much attention to this exercise? No—you will never regret, assure yourselves from me, an almost incessant devotion in the study of oratory; for whether, like Demosthenes or Cicero, you “stretch out your hand” in defence of your country or your friend, or whether, like the holy apostles, in defence of your religion or yourselves, you will find it of the utmost moment.

I am also happy to see the debates carried on with such spirit—a spirit which is a strong proof of your love of improvement and consequently of this society.

I discover, however, among all the flattering and pleasing appearances of our rising prosperity a Demon which alone will render all your exertions futile and barren. It is party spirit. Dissensions, Gentlemen, are not only contrary to your interests but to your reason, to your constitution, your inviolable constitution. Let the man who attempts to excite disturbances among you be considered as hostile to you as individuals and as a society. Detest him;—for he is not worthy your esteem, he is not entitled to the honour of a seat within these walls who would render you enemies to one another and to your own improvement.

We shall not long have the benefit of our oldest and most experienced members. We shall soon lose the Seniour Class and give them, I pray you, sufficient proofs of your desire to promote your education and future welfare and of your improved state, by your regularity in College and in society, by your studiousness and by performing all the duties incumbent on an American Whig.

I shall only add one thing more;—it is this—that you all exert yourselves, at the ensuing examination to the utmost of your power. Show the superiority of the society of the blue above that of the red ribbon! I do not wish to depreciate the members of the opposite Society; they

are respectable body, as scholars, and as individuals; else why are they at present superior to us in speaking? Why do we exult when we conquer them unless they are good scholars? Or why do we associate at all with them unless they are respectable as individuals? But my meaning is that the manner of discharging our exercises is superior to theirs; that our system of laws is better than those of our antagonists as is evident from our general demeanour in College. I could say much more; for there is ample field for remark, but perhaps I have already expatiated in too tedious a preamble. I shall therefore conclude and now attempt the execution of your injunctions.

THOMAS C. RUFFIN,
August 27th, 1804.
Whig-Hall.

OPINION IN THE STATE V. MANN¹

[Rough Draft.]

State vs Mann.

This is one of those cases which a Court will always regret being brought into judgment—One in which principles of policy urge the Judge to a decision in discord with the feelings of the man. But until the condition of our population be much changed or it shall seem fit to the Legislature to alter the rule, Courts are obliged, however reluctantly, to recognize the rights of the owner to full dominion over the *Slave*, as essential to their value as property, to the public peace as dependent upon their subordination and, indeed, while slavery in its present form shall continue to exist, as most effectually securing the general protection and comfort of the slave himself.

The Indictment charges the defendant with an assault and battery on Lydia, a slave, the property of Elizabeth Jones. This brings the case within the rule established in the *State vs Hall*, 2 Hawks, 582. It is not intended to question what is there decided even if it were an open question and had not been decided. But it is not considered open. It is settled by that case. The question, here, is altogether different, upon the evidence. The slave had been *hired* by the defendant for the year 1828 from E. Jones; and the battery complained of was committed during that year. The liability of the defendant to the general owner for a permanent injury, impairing the value of the slave, caused by the excessive and wanton battery on her or other fault of the hirer is a distinct matter of consideration. There can be no doubt, that the common doctrine of bailments apply are applicable to such a study of facts. But in a criminal proceeding and in reference to all other persons but the owner, the hirer and possessor of a slave, in relation to his rights

¹These three drafts of Judge Ruffin's decision in this rather famous case were found among his papers written in his own handwriting, and present a most interesting illustration of his method of developing an opinion. The last draft is identical with the printed opinion of the Supreme Court as found in 13 N. C., 263.

and duties, is, for the time being, the owner. The case therefore presents the general question, whether the owner of a slave is responsible *criminaliter* for a battery upon his own slave or other exercise of authority or force over him, not expressly forbidden by statute. Such a rule has not yet been established. This Court disclaims the power to lay down such a rule, or to enforce it, without it be first prescribed by the Legislature. The province of interposing between Master and Slave is too delicate, in our State of Society, to be assumed by Courts without the positive injunction of the lawmaker. This has been assimilated to the other domestic relations; and arguments drawn from the well established principles, which confer and restrain the authority of the Parent over the child, the Master over the apprentice and the tutor over the pupil, have pressed on us with zeal and ability. The Court cannot recognize their application. There is no likeness between the Cases. They are separated from each other by an impassable gulf. Without enlarging on the subject, it is enough to say that the difference between them is that, which exists between Freedom and Slavery. A contrast greater than that cannot be imagined. In the one case the subject of government is one born to equal rights with the governor, his offspring or his ward, young, helpless or inexperienced, the object of affection or benevolence, confided by providence or the law to the charge of another to be trained for usefulness in a station among freemen—the end in view, the happiness of the youth, the means, morals and intellectual instruction which, for the most part, are found to suffice. Force is superadded, only to make the former effectual in cases of intractability. In the other, the end is the profit of the master and the security of his person, and the public safety. And who is the subject of this authority? One who has only intelligence and moral feeling enough to make his service reluctant to enable him to understand that the laws, which condemn him to toil for another is unjust, to condemn that injustice and abhor the master who avails himself of it. Can he who has these consciousnesses be prevailed on by moral considerations to perform the functions of servitude? What moral consideration can be presented to him? Is it that there is to be no end to the degradation of himself and his descendants—that, thro' time, his offspring as well as himself are to have no will of their own and that their exertions are never to yield fruit but for a master? Surely every passion, good or bad, of the human heart combine to rebuke the folly of him, who advises or expects the Slave to serve his master upon a principle of natural duty. A submissive and entire obedience to the will of the Master can alone be expected to produce that subordination and those efforts of labor exacted from the slave. That submission of will can only follow from the power of the Master over the Body—a power which the Slave must be made sensible is not usurped, but conferred at least by the law of man, if not of God. Restraint, therefore, constant, vigilant, not unfrequently severe and exemplary and painful punishments

of the slave is the unwelcome, and the necessary task of the Master. This discipline belongs to the state of slavery. They cannot be disunited without abrogating all the rights of the master and annulling the duties of the slave. It makes the curse of slavery both to the bond and the free portion of our population. But in the actual condition of things, there is no remedy. The power of the master must be as strong and as absolute as the submission of the Slave must be unconditional and implicit. It is inherent in the relation of Master and Slave.

It is with pride as Citizens and sincere joy as men, that we observe every day improvements in the condition of slaves. The Legislature compels the owner to provide a comfortable subsistence for them, and gives him the same security of life which belongs to a free man: The Courts protect him from the cruelty and abuse of a stranger. Public opinion, in accordance with the humanity of the laws, demands a mitigation of the rigors of slavery, which has not been without the happiest effects upon the feelings of Masters, who now, generally, practice towards the blacks more mildness than formerly and as much indulgence as is consistent with the true interests of both classes and the common safety.

THE STATE V. MANN

[Second Draft.]

State vs. Mann

It is to be lamented when such cases as the present are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but when institutions similar to our own exist and are thoroughly understood. Besides, the struggle in the Judge's own breast between the feelings of the man and the convictions of the Magistrate is a severe one—presenting a strong temptation to put aside such questions if it be possible. It is useless however to complain of things inherent in our political State. And it is criminal in a Court to avoid any duty which the laws impose. While therefore Slavery exists among us or until it shall seem fit to the Legislature to interpose express enactments to the contrary, it will be the imperative duty of the Judges to refrain from laying down any rule, which can diminish that dominion of the Master, which is necessary to enforce the obedience and exact the services of the Slave accorded by our law to the owner.

The Indictment charges a battery by the defendant on *Lydia*, the slave of E. Jones. Upon the face of the indictment, the case is the same as *the State v. Hall*, 2 Hawks, 582.—That case is considered as settling this question, as it relates to a stranger. The Court finds no fault with the rule then adopted, even if it were now open. But it is then put to rest. The evidence makes this a different case. Here the slave had been *hired* by the defendant and was in his possession, and the battery was committed during the period of hiring. With the liabilities of the hirer the general owner for an injury to the slave perma-

nently impairing the value, no rule now to be adopted can interfere. The common doctrine of bailment would, no doubt, apply to that state of facts, modified to the emergency. The enquiry is, whether a cruel and unreasonable battery on a slave, by the hirer, is indictable. The Judge below instructed the Jury, that it is. It seems in the charge, to be put upon the ground, that the defendant had but a special property.

Our laws uniformly treat the Master, overseer or other person having the possession and command of the slave, as entitled to the same authority. The object is the same—the services of the slave: And the same powers must be confided. In a criminal proceeding and in reference to all other persons but the general owner, the hirer and possessor of a slave in relation to both rights and duties, is, for the time being, the owner. This opinion would dispose of the particular case before us; because this indictment, which charges a battery upon the slave of E. Jones, is not supported by proof of a battery upon the defendant's own slave, since, certainly, different kinds of justification are applicable to the two cases. But upon the general question, whether the owner is answerable *criminaliter* for a battery upon his own slave or other exercise of authority or force on him, not forbidden by Statute, the Court entertains as little doubt. That he is so liable has never yet been decided: nor even, as far as is known, has been before contended. There have been no prosecutions of the sort. The established habits and uniform practice of the Country, in this respect, is the best evidence of the portion of Power deemed by the whole Community, requisite to the preservation of the Master's dominion. We can not set our notions in array against the judgment of everybody else and say that this or that authority may be safely lopped off. This has, indeed, been assimilated at the Bar to the other domestic relations; and arguments drawn from the well established principles which confer and restrain the authority of the Parent over the child, the Tutor over the Pupil, and the Master over the Apprentice have been pressed on us. The Court does not recognize their application. There is no likeness between the cases. They are in opposition to each other and there is an impassable gulf between them. The difference is that, which exists between Freedom and Slavery—and a greater cannot be imagined. In the one, the end in view is the happiness of the youth, born to equal rights with that governor, on whom the duty devolves of training the young to usefulness in that Station which he is afterwards to assume among free men. To such an end and with such a subject moral and intellectual instruction seem the natural means; and for the most part, they are found to suffice. Force is superadded, only to make the others effectual. With slavery it is far otherwise. The end is, the profit of the Master, his security, and the public safety: The subject, one doomed in his own person and his posterity to live without knowledge and without capacity to make anything his own and to toil, that another may reap the fruits. What moral consideration shall be addressed to such a being, to convince him what it is

impossible but that the most stupid must know can never be true,—that he is thus to labor upon a principle of natural duty or for the sake of his personal happiness? Surely such services can be expected only from one, who has no will of his own; who surrenders his will, in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the Body. The power of the master must be absolute to render the submission of the slave perfect. I most freely and fully confess my sense of the harshness of this position. I feel it as deeply as any man can, and as a principle of moral right every one in his retirement must repudiate and condemn it. But in the actual conditions of things, there is no remedy. This discipline belongs to the State of Slavery. They cannot be disunited without abrogating at once the rights of the Master and destroying the subjugation of the slave. It constitutes the curse of slavery to both the bond and free portions of our population. But it is inherent in the relation of Master and Slave.

That there may be particular cases of cruelty and deliberate barbarity where, in conscience, the law might properly interfere is most probable. The difficulty is to determine, which is the proper case. Merely in the abstract, it may be asked, what power of the master accords with right? The answer will probably be found to sweep away all. The truth is, that every consideration forbids their being brought into discussion before Courts of justice. The Slave, to remain a slave, must be made sensible that there is no appeal from his master and that his power is, in no instance usurped but is conferred by the laws of man at least, if not the law of God. The danger would be great indeed, if the tribunals of justice should be called on to graduate the punishment appropriate to every temper and dereliction of menial duty. We are happy to see, that there is daily less and less occasion for their interposition. The protection already afforded by sundry statutes, the private interest of the owner, the benevolences towards each other seated in the hearts of those who have been born and bred together, the frowns and deep execrations of the Community upon the barbarian who is guilty of excessive and brutal cruelty to his unprotected slave, all combined, have produced a mildness of treatment and an attention to the comforts of that unfortunate class, greatly mitigating the rigors of slavery and ameliorating the condition of the slaves. The same causes will continue to produce and enlarge the same effects, until the disparity between the numbers of the whites and blacks shall leave the latter without power dangerous to the others, when the police now existing may be further relaxed. This result, much to be desired, may be much more rationally expected from the events above alluded to and now in progress than from any rash expositions of abstract truths by a Judiciary tainted with a fanatical philosophy and philanthropy.

I repeat therefore, that we would gladly have avoided this ungrateful question, But Courts are often compelled to act on principles, which

outrage individual feeling. This is one instance of it. We are obliged therefore to declare, that, until the Legislature shall otherwise order the Courts must recognize the rights of the owner to full dominion over the person of the Slave, unless restrained in particular instances by Statute. And this we do upon the ground, that such dominion is essential to their value as property and to the public peace, greatly dependent upon their subordination: and while slavery shall continue to exist in its present form as most effectually securing the general protection and comfort of the Slave—Let there be a new trial.

[Endorsed: State vs. Mann.]

THE STATE V. JOHN MANN¹

From Chowan.

The master is not liable to an indictment for a battery committed upon his slave.

One who has a right to the labor of a slave, has also a right to all the means of controlling his conduct which the owner has.

Hence one who has hired a slave is not liable to an indictment for a battery on him, committed during the hiring.

But this rule does not interfere with the owner's right to damages for an injury affecting the value of the slave, which is regulated by the law of bailment.

The defendant was indicted for an assault and battery upon Lydia, the slave of one Elizabeth Jones.

On the trial it appeared that the defendant had hired the slave for a year; that during the term the slave had committed some small offence, for which the defendant undertook to chastise her; that while in the act of so doing the slave ran off, whereupon the defendant called upon her to stop, which being refused, he shot at and wounded her.

His Honor, Judge Daniel, charged the jury that if they believed the punishment inflicted by the defendant was cruel and unwarrantable, and disproportionate to the offence committed by the slave, that in law the defendant was guilty, as he had only a special property in the slave.

A verdict was returned for the State, and the defendant appealed.

No counsel appeared for the defendant.

The Attorney-General contended that no difference existed between this case and that of the *State v. Hall*, 2 Hawks, 582. In this case the weapon used was one calculated to produce death. He assimilated the relation between a master and a slave to those existing between parents and children, masters and apprentices, and tutors and scholars, and upon the limitations to the right of the superiors in these relations, he cited Russell on Crimes, 866.

¹From 13 N. C., 263.

RUFFIN, Judge. A judge cannot but lament when such cases as the present are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own exist and are thoroughly understood. The struggle, too, in the judge's own breast between the feelings of the man and the duty of the magistrate is a severe one, presenting strong temptation to put aside such questions, if it be possible. It is useless, however, to complain of things inherent in our political state. And it is criminal in a Court to avoid any responsibility which the laws impose. With whatever reluctance, therefore, it is done, the Court is compelled to express an opinion upon the extent of the dominion of the master over the slave in North Carolina.

The indictment charges a battery on Lydia, a slave of Elizabeth Jones. Upon the face of the indictment, the case is the same as the *State v. Hall*, 2 Hawks, 582. No fault is found with the rule then adopted; nor would be, if it were now open. But it is not open; for the question, as it relates to a battery on a slave by a stranger, is considered as settled by that case. But the evidence makes this a different case. Here the slave had been hired by the defendant, and was in his possession; and the battery was committed during the period of hiring. With the liabilities of the hirer to the general owner for an injury permanently impairing the value of the slave no rule now laid down is intended to interfere. That is left upon the general doctrine of bailment. The inquiry here is whether a cruel and unreasonable battery on a slave by the hirer is indictable. The judge below instructed the jury that it is. He seems to have put it on the ground that the defendant had but a special property. Our laws uniformly treat the master or other person having the possession and command of the slave as entitled to the same extent of authority. The object is the same—the services of the slave; and the same powers must be confided. In a criminal proceeding, and indeed in reference to all other persons but the general owner, the hirer and possessor of a slave, in relation to both rights and duties, is, for the time being, the owner. This opinion would, perhaps, dispose of this particular case; because the indictment, which charges a battery upon the slave of Elizabeth Jones, is not supported by proof of a battery upon defendant's own slave; since different justifications may be applicable to the two cases. But upon the general question whether the owner is answerable, *criminaliter* for a battery upon his own slave, or other exercise of authority or force not forbidden by statute, the Court entertains but little doubt. That he is so liable has never yet been decided; nor, as far as is known, been hitherto contended. There have been no prosecutions of the sort. The established habits and uniform practice of the country in this respect is the best evidence of the portion of power deemed by the whole community requisite to the preservation of the master's dominion. If we thought differently we could not set our notions in array against the judgment of everybody else, and say that

this, or that authority may be safely lopped off. This had indeed been assimilated at the bar to the other domestic relations; and arguments drawn from the well-established principles which confer and restrain the authority of the parent over the child, the tutor over the pupil, the master over the apprentice, have been pressed on us. The Court does not recognize their application. There is no likeness between the cases. They are in opposition to each other, and there is an impassable gulf between them. The difference is that which exists between freedom and slavery—and a greater cannot be imagined. In the one, the end in view is the happiness of the youth, born to equal rights with that governor, on whom the duty devolves of training the young to usefulness in a station which he is afterwards to assume among freemen. To such an end, and with such a subject, moral and intellectual instruction seem the natural means; and for the most part they are found to suffice. Moderate force is superadded only to make the others effectual. If that fail it is better to leave the party to his own headstrong passions and the ultimate correction of the law than to allow it to be immoderately inflicted by a private person. With slavery it is far otherwise. The end is the profit of the master, his security and the public safety; the subject, one doomed in his own person and his posterity, to live without knowledge and without capacity to make anything his own, and to toil that another may reap the fruits. What moral considerations shall be addressed to such a being to convince him what it is impossible but that the most stupid must feel and know can never be true—that he is thus to labor upon a principle of natural duty, or for the sake of his own personal happiness, such services can only be expected from one who has no will of his own; who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce the effect. The power of the master must be absolute to render the submission of the slave perfect. I most freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can; and as a principle of moral right every person in his retirement must repudiate it. But in the actual condition of things it must be so. There is no remedy. This discipline belongs to the state of slavery. They cannot be disunited without abrogating at once the rights of the master and absolving the slave from his subjection. It constitutes the curse of slavery to both the bond and free portion of our population. But it is inherent in the relation of master and slave.

That there may be particular instances of cruelty and deliberate barbarity where, in conscience, the law might properly interfere, is most probable. The difficulty is to determine where a Court may properly begin. Merely in the abstract it may well be asked, which power of the master accords with right? The answer will probably sweep away all of them. But we cannot look at the matter in that light. The truth is that we are forbidden to enter upon a train of general reasoning

on the subject. We cannot allow the right of the master to be brought into discussion in the courts of justice. The slave, to remain a slave, must be made sensible that there is no appeal from his master; that his power is in no instance usurped; but is conferred by the laws of man at least, if not by the law of God. The danger would be great, indeed, if the tribunals of justice should be called on to graduate the punishment appropriate to every temper and every dereliction of menial duty. No man can anticipate the many and aggravated provocations of the master which the slave would be constantly stimulated by his own passions or the instigation of others to give; or the consequent wrath of the master, prompting him to bloody vengeance upon the turbulent traitor—a vengeance generally practiced with impunity by reason of its privacy. The Court, therefore, disclaims the power of changing the relation in which these parts of our people stand to each other.

We are happy to see that there is daily less and less occasion for the interposition of the Courts. The protection already afforded by several statutes, that all-powerful motive, the private interest of the owner, the benevolences towards each other, seated in the hearts of those who have been born and bred together, the frowns and deep execrations of the community upon the barbarian who is guilty of excessive and brutal cruelty to his unprotected slave, all combined, have produced a mildness of treatment and attention to the comforts of the unfortunate class of slaves, greatly mitigating the rigors of servitude and ameliorating the condition of the slaves. The same causes are operating and will continue to operate with increased action until the disparity in numbers between the whites and blacks shall have rendered the latter in no degree dangerous to the former, when the police now existing may be further relaxed. This result, greatly to be desired, may be much more rationally expected from the events above alluded to, and now in progress, than from any rash expositions of abstract truths by a judiciary tainted with a false and fanatical philanthropy, seeking to redress an acknowledged evil by means still more wicked and appalling than even that evil.

I repeat I would gladly have avoided this ungrateful question. But being brought to it the Court is compelled to declare that while slavery exists amongst us in its present state, or until it shall seem fit to the legislature to interpose express enactments to the contrary, it will be the imperative duty of the judges to recognize the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute. And this we do upon the ground that this dominion is essential to the value of slaves as property, to the security of the master, and the public tranquillity, greatly dependent upon their subordination; and, in fine, as most effectually securing the general protection and comfort of the slaves themselves.

Per Curiam.—Let the judgment below be reversed, and judgment entered for the defendant.

MEMORIAL¹

Mr. Ruffin from the Select Committee appointed at a meeting of the Board on 20th July last "to prepare and present to the Legislature a Memorial setting forth a full and true account of the present condition and future prospects of the University" submitted to the consideration of the Board the following memorial:

To the General Assembly of the State of North Carolina

Gentlemen,

The Memorial of the Trustees of the University of North Carolina respectfully represents,

That the situation of the Institution committed to their care by your Honorable Body imposes the duty on them of accounting to the Legislature for the administration of their trust by the exhibition of a full and true statement of the present condition and future prospects of the University, and asking from the Sovereign Authority such interposition as may be deemed requisite to sustain and promote the prosperity and usefulness of the establishment. From it our Country has already derived the advantage of a general diffusion of liberal and scientific education: And to it she must chiefly look in future for a supply of able and upright members of her professions, teachers of Youth, and faithful and enlightened public servants. The Trustees feel a deep Interest in the welfare of the College, and, sensible of its true value have endeavored to execute to the utmost of their personal ability and as far as the pecuniary means placed at their disposal would allow the important public Trust Committed to them. They believe that the people of the State generally entertain a strong sense of the value of the Institution to those now living and its immense importance to future generations. And they doubt not but that your Honorable Body participates in that deep solicitude for the welfare of this seminary of learning, established under an injunction of the Constitution, by your predecessors; and will

¹This memorial, written by Ruffin, is taken from the Minute Book of the Board of Trustees of the University of North Carolina, p. 182. It is accompanied by the following entry:

EXECUTIVE OFFICE,
24th November, 1830.

Board met

Present

His Excy. John Owen, Prest.
Simmons J. Baker
Thomas Burgess
- Louis D. Henry
James Iredell
Charles Manly
William Robards
Thomas Ruffin
Richard D. Spaight
Montfort Stokes

upon due information and consideration, do whatever may be necessary to prevent its sustaining any loss, and especially that of existence.

The endowment of the University out of the Public Treasury consisted of the arrearages due to the State from receiving officers of the present and the late governments up to the 1st day of January 1783; upon which the sum of \$2706:41 had been collected by the Treasurer of the State who paid it over to the trustees in the year 1789 in conformity to the Act of incorporation, passed in that year. In the year 1791 the Legislature loaned the further sum of \$10,000 to the College; and subsequently made an absolute donation of it. It is believed that no other advance has been directly made from the Treasury.

By other Statutes, grants of all escheated property and of certain confiscated estates were made and by an Act passed in 1809 all monies remaining in the hands of Executors and Administrators seven years unclaimed by legatees or next of kin, and debts due to the state up to December 1799 were vested in the Trustees. The arrearages and debts due to the State consisted almost entirely of old Judgments or other state demands against officers who had removed or become insolvent; and the donation proved to be nearly unproductive. Considerable sums were received from the sales of confiscated property and collected from the purchasers of lands from Henry Eustace McCulloh, whose estates were included in the Confiscation Acts and in the grant to the University. The amount thus realized was vested in the funded debt of the United States as the foundation of a permanent fund for defraying the annual expenses. But by the Act of 1804 passed upon the decision of the Case of McCulloch vs. Ray in the Court of Conference that grant was revoked, and the Trustees required to transfer their stock to the State. In obedience thereto they paid and transferred on that account in February 1805 the sum of \$5,933:38; in December 1806, the sum of \$1,123:32; and in November 1807 the further sum of \$103:88 making in the whole the sum of \$7,160:58, reimbursed to the state out of the donation of confiscated property.

The Funds of the Institution were further augmented by the Grant of Two Lotteries; from which by much exertion and risk the sum of \$5,080:80 appears to have been realized.

With these exceptions, this great and useful school was established and has been supported for nearly forty years by funds derived from *escheated estates*, and the donations of beneficent and patriotic individuals, influenced by a zeal for the morals, learning and liberties of the state.

In 1789 the grant of escheats was, as expected and intended by the able and virtuous Legislators who chartered the Institution, a gift of real value; from which frequent and large sums were derived. The departure from the Country and death abroad of that portion of the inhabitants who adhered to the cause of the Mother Country, and the destruction of life by the hardships and battles of the Revolution, left

many estates without owners. The recent connexion of the State with a European Government and its commercial dependence, had brought many natives of Great Britain and the Continent to our Country, who adopting it as their own, lived and died amongst us, leaving only alien heirs, whom our laws most properly excluded from inheriting.—But the income derived from this source is, at this day, reduced to almost a nominal sum. It was greatly curtailed by those acts of the Legislature which let in a remote heir, being a Citizen of this Country, notwithstanding the existence of a nearer alien heir; and which confer all the estates, both real and personal, on the widow of an Intestate leaving no heir of his blood. The diminution however mainly arises out of altered conditions of the Country itself; which by the increase of our people, their greater intelligence and acquaintance with the arts and the principles of trade, has happily filled its occupations with native citizens. Thus the inducements for foreign emigration no longer exist; and consequently few persons from abroad now make their domicile here, and still fewer acquire fortunes and leave them undisposed of by will. In point of fact, therefore the College finds in Escheats in North Carolina no resource, although vigilant and faithful agents are appointed in nearly every part of the State.

Under the Grant of that *droit* of the State, however, the Trustees were advised that they were entitled to escheats in the State of Tennessee which had fallen in before this State ceded the territory now constituting that member of the Union. And the Board ever anxious and on the alert to enlarge the means of the College, and thereby fulfill what they deemed to be at once the Legislative will and their own personal duty, upon the extinguishment of the title of the Chickasaw Indians, which opened the Western District of Tennessee for the location of the military land warrants of North Carolina, asserted a claim to all the warrants of soldiers, who died before the cession and left no heirs at law.

After much difficulty and expense a compromise was effected with Tennessee, by which grants were obtained from that State by the Trustees for a large quantity of valuable land. By a report of their agent in Tennessee, there remain unsold of the lands of the College in that State 106.051 acres, including the donations before made by the late Major Charles Gerard and Governor Benjamin Smith, and sales had been effected and bonds for the purchase money taken and held by the Agent to the Amount of \$71,081.28 principal money.

It is unnecessary to incumber this memorial with an enumeration of the obstacles presented by Tennessee against the issuing the Grants to the University, since they were finally happily removed, as far as concerned that State, by the Compromise and grants did issue. The Trustees hoped that their Titles were finally secured, by that event; but at an early day, other difficulties not less serious arose between individuals and the Trustees. Many persons who are or pretended to be the Heirs of the deceased soldiers claim in that right a conveyance of the lands.

The Trustees conceiving the estates to have been vested in them solely, upon a public and sacred Trust, have not considered themselves at liberty to run any risk of being drawn in by specious pretences to surrender that which in law and justice belonged to the College. They have therefore declined to convey upon mere claim supported by *ex parte* Affidavits; and in general and except in cases which were clear beyond a doubt, they have thought it their duty to leave claimants to their legal remedies, and themselves abide the result of a Judicial investigation. But altho the Trustees have thus felt themselves bound to guard strictly the interests committed to their charge, they have on the other hand not been conscious of an obligation on them to defeat true claimants or deal unjustly by selling lands with doubtful titles, and thereby multiply the obstacles in the way of a judicial ascertainment of the Claimants' right, or deceive persons purchasing from the Trustees themselves. Indeed policy, not less than honesty, forbids such a course: for very inadequate prices could be obtained upon sales with special warranty; and upon general warranties the College might be ultimately made responsible for large sums, to the impoverishment of the Institution, if it should remain solvent; or if insolvent to the ruin of its evicted venders.

Under these circumstances it has been deemed incumbent on the Board not to force sales; and to order that no tract should be disposed of to which a conflicting claim was known. This was done in the hope, that some one or more of the Claimants would bring suits, in which the legal questions might be discussed and settled. Many claims have been preferred; but as yet only a few actions have been instituted. One has been lately decided in the Courts of Tennessee adversely to the University, and has been by appeal carried to the Supreme Court of the United States for final determination.¹ Upon it mainly depend the fate of the other claimants and of the College. It is deemed unsafe by the Trustees to make sales of the lands in this state of the controversy. The same reasons restrain them from pressing by coercive means the collection of the debts already due from prior purchasers. It would be inequitable towards the debtors to do so, as they have a right to expect the title to be settled before the exaction of the purchase money; and they obtain from Chancery protecting relief, if not accorded to them by the clemency of the Trustees.

Besides the Board have thought it to the honor and interest of the Institution not to add purchasers from them to the number of their adversaries in and out of Courts, and not to expose themselves to the danger of having Decrees against them to refund what they might not then have the means of doing. The agent has therefore been instructed to receive in general, only payments voluntarily made. The lapse of time is, in the meanwhile adding to the strength of the title and quieting the purchasers in their minds and possessions.

¹Pinson and Hawkins v. Ivey. Dr. Battle in his History of the University of North Carolina, Vol. I, p. 393, says that he was unable to find the cases in the Supreme Court Reports. Webster represented the University.

The value of the unsold lands is not easily determined; and the Board has no datum, upon which they can properly ask the reliance of the General Assembly on that point. By an estimate made by intelligent gentlemen in Tennessee in 1820 and 1822, the value ought to be about \$240,624:00—But it is feared and believed that the actual proceeds, after deducting the heavy charges incident to estates so remote and involved in legal controversy will be much less. If the amount of the Bonds before spoken of viz \$71,081:28 be added thereto an aggregate is formed of \$311,723:28; one half of which if it can be saved, and the Board of Trustees and the College be in the meanwhile preserved by the aid of the Legislature from dissolution would constitute a permanent fund adequate to the perpetual support of this great hope of the intelligent and good people of this State.

The remaining estates of the College (excepting some small sums due on Bonds in this state) consist of 241 shares of the Capital stock of the Bank of Newbern, of the College buildings and the lands on which they are situate at or near Chapel Hill; the Library and Chemical and Philosophical Apparatus. By a careful husbanding, and in general, a judicious application of the apparently small means which constituted the endowment of the Institution, the Trustees have been enabled by the aid of private donations, to sustain the College for, now, nearly forty years at an average annual expense of probably \$5000, and erect the large, commodious and durable Buildings of the University. These consist of three spacious brick buildings, a hall and unfinished Chapel of the same materials; besides several wooden buildings for the residence of Professors and a Steward's Hall. The actual cost of the Buildings, as appearing upon the Book of Accounts, has been the sum of \$95,537:41 besides annual outlays for repairs, and the Library and apparatus supposed to have cost and to be now worth more than \$10,000—This whole property now belongs to the State, and is in a condition for the reception and accommodation of the Teachers and Students. Formerly much inconvenience was experienced from the want of rooms. Some young men could not be received within the colleges, and many of those admitted there suffered in their health and attention to their studies, by being crowded into the same apartment with several others: murmurs were frequently and generally expressed at those inconveniences. To obviate them, and make the Institution as far as possible subservient to the great purposes of its creation by affording accommodations under the immediate inspection of the Faculty within the colleges themselves, to *all* Students, the Board determined to increase the Buildings to their present number and magnitude. The measure was deemed indispensable: as, for several years, the number of students was from 150 to 200. To effect this desirable object the Trustees thought it necessary and prudent to borrow money. It was obtained from the three Banks of this State. After much indulgence from the Banks and various payments by the Board, the debts of the Institution were estimated by

a Committee of the Trustees in July last, and ascertained then to amount to the sum of \$37,518:73—At that time, and at the times of contracting the debts, the Board owned Stock in those Banks, as follows; In the State Bank 23 Shares: the Bank of Cape Fear 111 shares: And in the Bank of Newbern 241 Shares: in all 375 shares. The stock was purchased *at par* and cost \$37,500. Since the vicissitude of fortune experienced by our Banking institutions, and indeed by most persons engaged in Agriculture or trade in this State, we are all enabled to put our finger on the very point of error of the Board. It was in raising money by loan instead of the sale of their stocks. But the Trustees hope to be exempted from reproach for an error that was common to our best informed Citizens in the management of their private affairs; and indeed to those occupying Legislative Stations also, by whose directions the surplus funds of the State were annually invested in the same stocks, long afterwards.

The object of the Board was to make investments at once profitable and secure. *None*, effecting in an equal degree those purposes, was known to them, more than to those Legislatures who commanded similar purchases to be made with the money of their Constituents. In the event, the mistake of both bodies, as well as private adventurers, has been made manifest. But that could not have been, and certainly was not anticipated by the Trustees more than by your predecessors or the people—The Stocks were purchased when the Banks made large dividends. They were not sold because they were thought to furnish certain means of discharging the debts, whenever the demand became absolute; and that in the meanwhile the excess of dividend above the rate of Interest on the loan, was a clear accession to the funds of the Institution.

In truth, however, they have served neither the one purpose, nor the other. The price of Stocks has fallen, so that a competent sum could not be raised for the payment of the debt by a sale of it, and the profits have in an equal degree sunk: for one of the Banks declares dividends of only 4 per cent *pr. annum*; while other two have of late been unable to declare any. Saving that the accruing interest on the debt added constantly to its amount, and by being thus compounded would soon swell the debts to such an amount as would cover the whole effects of the College, the Trustees at a special meeting in July last, determined to diminish their incumbrance by selling such of their stocks as they could find market for. They accordingly ordered the sale of the State Bank and Cape Fear Bank Stock at 75 and 80 per cent the highest market prices then to be had. By means thereof and of sums collected in Tennessee and elsewhere, the debt is now reduced from \$37,518:73—to \$20,124:55, namely to the State Bank \$13,575:39—with interest from the 19th day of August last; and to the Bank of Newbern \$6,549:16 with interest from the 17 June 1829 as appears by a Report made to the Board by their Treasurer on the 22 November instant. By the same report it appears, also, that the Treasurer has a surplus of cash on

hand of \$3,143.21, but of that, nearly the whole, namely the sum of \$2790, will be absorbed by the salaries of the President and other members of the Faculty, at the end of the present session.

The stock of the Bank of Newbern viz 241 shares is still held by the Board. It was not and could not be sold except at the risk of acting in the dark; for the directors of that Bank have not yet fixed on any price at which the Bank will receive it in payment; it yields however no dividend.

It must now be manifest to your Honorable Body, that with ample resources in prospect, the actual income of the University is nearly nothing, save that arising from the fees of tuition. Those fees have been reduced as low as possible, that opportunity of obtaining education may be afforded to the greater number, including the most valuable portion of ours, as of every other community, the sons of men of middling and barely independent property. It has been fixed at \$30 per annum for each class and every branch of Science, and is less than at any other college known to the Board. At the enlargement of the establishment the number of students was nearly 200 as already mentioned: and the tuition money went to defray the annual expenses. From various causes, but chiefly from the general distress for money throughout our State, and indeed throughout the agricultural region of the Southern portion of the Union, and from the erection of well endowed colleges and schools in the neighboring states on all sides of us, the number is now diminished to about 80, and has been less. The revenue derived from that source may therefore be estimated at about \$2400. The Faculty consists of a President at a salary of \$1600. Four Professors at salaries of \$1240 each and two tutors of \$400 each. To this is to be added the salaries of the Secretaries and Treasurer, and Superintendent, repairs and other incidental expenses estimated in the whole at \$840. The annual charge upon the Institution may then be stated as follows:—

Salary of the Faculty	\$7,360.00
Other officers and incidental expenses	840.00
Interest upon the debt viz \$20,124.55	1,207.47
Making an aggregate of	9,407.47
Deduct probable tuition fees	2,400.00
Leaving a deficiency of.....	7,007.47
Which may be further reduced, if the State will assume the debt to the Banks, by a deduction of the charge of interest on the same	1,207.47
Ultimate deficiency	5,800.00

To make up the above mentioned deficiencies the Trustees have no certain or active funds. The Bank Stock is unproductive: the escheats having been first greatly curtailed by the Acts of the General Assembly

have finally from other causes nearly ceased to yield anything. It does not comport with the honor of the General Assembly and the State that the Board should again seek alms from private persons for the purpose of supporting a public Institution. Indeed, if such applications were proper it is believed they would now be useless, as few are able to give and fewer, willing. No immediate expectations are to be indulged of funds being derived from the western lands, for the reasons already fully developed. No expense can be curtailed within the knowledge of the Board without injustice to the able men who fill its chairs, and compelling them (which can by them be readily obtained) to take employment in other seminaries better able to engage and compensate their valuable services. The Board hopes and believes the present depression in the funds and in the number of students to be temporary only; and that by a slight exertion of the fostering care of the Legislature, this Institution, demanded as well by the wishes as the welfare of the people may be revived. In the course of three or four years at furthest its fate must be definitely ascertained. That depends upon the decision upon its right to the escheated lands in Tennessee. If favorable, it fixes its prosperity almost beyond the reach of mischance and certainly above the necessity for further appropriations from the Treasury: if unfavorable it will leave the University like the Colleges of some of our sister states wholly dependent upon annual appropriations; or, if the Legislature so please, will terminate its existence altogether,—while however there continues such good promises of an adequate and durable fund for its support, the Trustees cannot suppose that your Honorable Body will permit the College to be broken up; the extensive and valuable Buildings unoccupied and neglected to go to decay; the able Faculty dispersed beyond the reach of future collection; the Youth of the State to remain uneducated, or to go abroad for that purpose, expending large sums of money out of the State, and contracting and bringing back feelings and attachments, and opinions and principles not *North Carolinian*.—With these impressions, the Trustees would have been conscious of unpardonable default if they should have concealed from the Legislature the condition and necessities of this all important Institution; and by such concealment kept it out of the power of the General Assembly to preserve its existence and continue its usefulness. They have therefore communicated thus fully the actual state and future prospects of the College, that such order may be taken to sustain it, as shall seem meet to the guardians of the Commonwealth and the Representatives of the people, whose property, and whose precious property this Institution is. And such further information as may be required by your honorable body, or any Committee appointed by you, as may be contained in the Books and papers of the Trustees or possessed by any member of the Board, or their Officers, will with pleasure be supplied upon request.

The Trustees do not presume to ask for any specific measure of relief; but submit that entirely to the will of the Legislature. On behalf of the institution, they will thankfully receive any aid, that may be deemed equal to the exigency. A direct grant of a sum sufficient to free it from debt, would most immediately and effectually serve it, especially if accompanied by an appropriation for three or four years of a sum adequate to supply any part of the before mentioned annual deficiency, which may not be met by the current collections for the College in the West and at home. If this should be deemed beyond the merits of the College or its necessities, or the ability of the Treasury, without any undue restriction of appropriations for other purposes, the Board would suggest that as the State is a large holder of Stock in the Banks who are the creditors of the University, she might conveniently assume the debt and extinguish it at her option by a sufficiency of the Stock in one of those Corporations. Should this also not find favor it may be then well considered whether it be wise and politic that the public should suffer its own child and favorite seminary to be overwhelmed by the interest accruing on this large debt, whilst a *Literary Fund* of a greater amount is lying dormant in the Vaults of the Treasury, or deposited in the Banks for their use and emolument. Should a further *donation* therefore be declined your Memorialists would respectfully ask that the literary fund should be applied to the relief of the College by way of loan, without Interest or so much thereof as will discharge their debt say \$21,000—and will also for three or four years more (until the title to the western lands can be determined) supply the annual deficiency before mentioned, to which the Collections of the Board shall be inadequate.

The Legislature has indicated the purpose of making no further investment of that fund in stocks. If it is to remain unproductive in a pecuniary point of view, it is most respectfully suggested that in no manner can it be so useful as in reviving and sustaining the University an Institution certainly possessing higher claim than any other with which the fund could be deposited. But if a profit on that fund be considered indispensibly due to the State or to the fund itself, the board would deem it their duty, with the approbation of the Legislature to take up on a reduced or even a full interest such portion of it as would answer the purposes already specified. The Trustees would be impelled to accept the loan on even the most disadvantageous terms (when prescribed by your honorable body) by the consideration that they cannot meet even the interest of their debt, much less the instalments which under the statute of 1829 the Banks were required to exact from their debtors; and by the further consideration that as they humbly think, it is their duty to hazard every thing rather than discharge the Faculty and stop the exercises of the College. Yet, what particular course the Trustees shall adopt, rests exclusively with the Legislature to designate; and they in common with their fellow citizens

generally, confide that it will be just, wisest, best, and they will cheerfully endeavor to execute any duty that may be assigned to them.

Your memorialists refrain from indulging in extended reflections, though obviously growing out of the occasion, upon the vast importance of education; its influence upon individual happiness; its tendency to enlighten and purify the mind, to chasten and correct the evil passions and propensities of our nature, and soften the affections; to enlarge the sphere of human action and promote enterprize and the arts; multiply useful men and increase their capacity for usefulness; and in a popular government to inform the community at large, and dispose them to cherish and qualify them to defend their free institutions. All these considerations address themselves so powerfully and directly to the understanding, that every man, and much more every member of your honorable body, must estimate its importance highly. In North Carolina every person who is old enough to remember when the University was not, must have observed, and cannot but testify to the effects most salutary, of its establishment. And those who have reaped its fruits by having been its inmates, or by being associated with or served by them in public stations, cannot surely be less sensible of those effects. Without enlarging upon the merits of the Institution in the abstract the deep interest which ought to be taken in it will more precisely appear when the fact is mentioned that upon *Four hundred and Sixty* of our sons, after receiving within its Halls a regular course of collegiate education, have been conferred the usual academical degree; and that besides a number of others supposed to be nearly equal to the graduates, have been likewise taught and beneficially taught, though not completing the course, they did not receive degrees. These Seven or Eight hundred of the Alumni of Chapel Hill, now fill with honor to themselves and the College and with usefulness to their country most of her posts of distinction, trust, labor, and responsibility in her Legislatures, her Judiciary, her professions, her schools, besides adding greatly to the mass of general information caught from them in the intercourse of Society and diffused through the body of our Citizens. Many who have sought employments and homes in distant sections of the Union make us favorably known in Sister States, adorn our character and their own, cherishing a grateful memory of the land of their birth, thank God that though they do not live in North Carolina they were born on her soil and were educated under her patronage.

The merits of the present Faculty of the College would render it an act of injustice to the gentlemen composing it and to the reputation of the University, were your Memorialists to withhold the expression of their confidence in them, and their opinion of the importance of retaining them in the service of the State if possible. The professors are sufficiently known to the trustees to enable them duly to appreciate them. Without descending to particulars offensive to their modesty, it will suffice to say that they have proved themselves by their ability

adequate to their tasks, and by their faithfulness, worthy of their trust. They are able teachers, discreet governors, and the kind friends of their pupils.

And under their superintendence the University of North Carolina has afforded and does afford opportunities for the acquisition of solid and polite learning, not surpassed by those to be *found* in any of the other Colleges of the Country. But the age, the character and the pre-ëminent services of the venerable, learned and pious gentleman who presides over the College furnish both the motive and the excuse for the declaration by the Trustees, of their profound sense of the value of those services, and the magnitude of the debt which the alumni of the College and the State at large owe him. He entered the College in 1796: at which time he was appointed a Professor. He has without the least intermission earnestly and ably devoted himself the thirty-four subsequent years to the useful, but laborious and unostentatious employment of imparting knowledge and forming the minds the morals and the characters of the youth of this State. With qualifications eminently suited and always equal to his responsible stations, he has employed under all discouragements his great abilities and attainments with a constancy to be inspired only by the enthusiasm of a virtuous heart in so holy a cause to the single end of educating our sons, and establishing upon a firm basis the merits and the reputation of the University. What success his zeal and abilities have won the character of his school and the happiness and usefulness of seven or eight hundred of his pupils, composing a large part of all the men now distinguished in active life amongst us can well attest. Untired, by labor and unawed by responsibility he has at all times, cheerfully executed all his duties. Regardless of the honor which consists in station only, he once relinquished to another gentleman the office of President and descended himself to a professor's chair. After but a short respite the interests of the College demanded his recall to his former eminence, and with alacrity he met the invitation of the Board and again assumed his former place. Identified with the institution which he has reared with the assiduity, care and tenderness of a parent for a child, he has, uninfluenced by the motives which usually affect other men, repeatedly refused to abandon it for the highest chairs in other colleges, much more liberally endowed than that filled by him here. To no man can a larger debt be due by this state, if it be estimated by the value of his services, their length, their usefulness, their ability, and their disinterestedness. It is true that he finds his rewards and apparently that most agreeable to him in the grateful reverence which, as he deserves, he possesses, of the seven or eight hundred pupils whom he has taught, of whom nearly every one acknowledges him as his chief benefactor, in the cordial respect of all portions of the community to whom he has given so many useful members, and in the approbation of his own conscience. We cannot but look

to Providence with an earnest prayer for prolonged life to such a man as *Joseph Caldwell*, and that he may for a long time to come lose neither the capacity nor the inclination nor the opportunity of fulfilling, where he is, the high functions of his profession.

The mind revolts from the thought that this venerable and venerated apostle of science and virtue should in the natural life of his frail body survive the child of his mental labors for thirty four years; that he should now be compelled to abandon the scenes of his studies and usefulness through such a long course of time, and seek another abode, after witnessing the downfall and ruin of that institution which has thus engaged his undivided attention, and from which he has shed abroad through the land the lights of knowledge, of science, social duty, public virtue, private probity, and Christian piety.¹

OPINION IN HOKE V. HENDERSON²

John D. Hoke v. Lawson Henderson.

A clerk appointed under the act of 1806 (Rev., ch. 693) has an estate in his office, and although the Legislature may destroy the office and by consequence the estate in it, yet the act of 1832 which continues the office, but transfers the estate in it to another, is unconstitutional and void.

On the last circuit, at Lincoln, before Norwood, J., the plaintiff produced a certificate of the sheriff of Lincoln, which set forth that an election held in pursuance of Laws 1832, ch. 2, he, the plaintiff, had been duly elected clerk of the Superior Court of Lincoln. The plaintiff then tendered the bonds required by the act, and moved that he might be qualified and permitted to take upon himself the duties of office. This was opposed by the defendant, who proved that he had been appointed clerk of that court, in April, 1807, under the act of 1806 (Rev., ch. 693, sec. 10); that he had regularly qualified, and given bonds for the faithful performance of the duties of his office, and that those bonds had been renewed according to the several acts of Assembly requiring such renewal. His honor disallowed the motion, because in his opinion Laws 1832, ch. 2, was unconstitutional, and therefore null and void, and in consequence did not affect the defendant's right to the office. From this judgment the plaintiff appealed.

Iredell and Devereux for the Plaintiff.

Badger for the Defendant.

¹The following entry is taken from the minutes of the Trustees: The foregoing memorial was read and approved of and ordered to be communicated to the Legislature by the President of the Board.

²From 15 N. C., 1. This decision which was utterly at variance with those of the Supreme Court of the United States and the courts of last resort in all the other states was finally overruled in *Mial v. Ellington*, 134 N. C., 136.

The act of 1832 is as follows:

AN ACT TO VEST THE RIGHT OF ELECTING THE CLERKS OF THE COUNTY AND SUPERIOR COURTS IN THE SEVERAL COUNTIES WITHIN THIS STATE, IN THE FREE WHITE MEN THEREOF.

Be it enacted, etc., That at the next election for members of the General Assembly within this State the sheriffs, deputy sheriffs, and inspectors and all persons holding the elections, shall open a poll and receive votes given for county and Superior Court clerks in the same manner and under the same rules and regulations that they now receive and return votes for members of the General Assembly, and in case of failure of persons appointed to hold said elections, or either of them, it shall be competent for a justice of the peace and two freeholders to supply such vacancy.

II. And be it further enacted, That all free white persons qualified to vote for members of the House of Commons in the General Assembly of this State shall be entitled to vote for clerks of the Superior and county courts in their respective counties.

III. And be it further enacted, That the sheriffs or other persons qualified to hold said elections shall at the courthouse or place of returning or comparing the polls declare the person or persons having the highest number of votes duly elected clerk of the county or Superior Court, as the case may be, who shall continue in office for the term of four years next after their qualification; and in the event of two or more persons having an equal number of votes for either of the offices aforesaid, then and in that case the court of pleas and quarter sessions, a majority of the acting justices being present, shall proceed to make the election as now prescribed by law in case of the election of sheriffs; and said courts in manner aforesaid shall be a competent tribunal to decide all contested elections arising under this act.

IV. And be it further enacted, That the clerks elected under this act shall, at the first term of their respective courts which shall happen after their election, execute and tender to the said courts such bonds, and take such oaths as now are or hereafter may be prescribed by law; and where a vacancy shall be occasioned by failure to give necessary bonds, refusal or neglect to qualify, death, resignation, removal or otherwise, the court in which such failures may happen shall proceed to fill the vacancy under the same rules, regulations, and restrictions as are now required by law; and the person or persons so appointed shall continue in office until the next annual election for members of the General Assembly, or the first term of the courts of pleas and quarter sessions which shall thereafter happen.

V. And be it further enacted, That such person or persons, and no others who shall have attained to the age of 21 years and have resided

in the county in which they may have been chosen twelve months immediately preceding the day of election, shall be eligible to the office of county or Superior Court clerk: Provided always, that nothing herein contained shall be so construed as to repeal the law, or any part thereof, which renders the courts liable for neglecting to take sufficient securities of the clerks of the County or Superior courts.

VI. And be it further enacted, That this act shall be in force from and after the ratification thereof, and all laws and clauses of laws, coming within the meaning and purview of this act, be and the same are hereby repealed.

RUFFIN, Chief Justice. The office of clerk of the Superior Court of law, for LINCOLN, is claimed by Mr. *Hoke*, by virtue of his election thereto under laws 1832, ch. 2; and his admission is opposed by Mr. *Henderson*, who claims the same office by virtue of a previous appointment thereto, under the act of 1806. The title depends upon the construction and validity of the act of 1832.

The decision in the Superior Court was in favor of the old clerk, and is rested by the Judge who pronounced it distinctly upon the ground that the act is unconstitutional and therefore void.

In support of the decision it has, however, been contended here that it is not necessary, for the purpose of this controversy, to pass upon the correctness of the reasons of the Judge of the Superior Court; for that the act does not, in terms and according to a proper construction, oust the defendant from office.

It is true, the act does not immediately vacate the offices which were filled at its passage; nor does it expressly remove the incumbents upon the future elections to be had under its provisions. The question is, whether the effect arises from the necessary or fair construction of those provisions taken together. In construing an instrument the cardinal point is to ascertain the meaning of those who speak in it from the words used by them and the objects apparently to be effected. This is the rule or the construction of statutes, as well as other instruments: and it is the duty of the court to whose province it falls, according to the distribution of the powers of Government in this country, to interpret statutes, to put a fair meaning upon the language of the Legislature, in order to effect, as far as they are constitutionally allowable, the ends in view. If the words are ambiguous, and the evils to be remedied not apparent, or not specified, and the remedy not plainly designated, the effects and consequences of the one construction or the other may and ought to be resorted to as important aids to the expounder. If in one sense the enactments are reasonable, consistent with natural equity and a sound public policy, and if, in another sense, they invade private right, are retrospective in their operation in denouncing punishments for acts not before criminal, or in diverting property secured by previous laws, and the guaranty of public faith—if they are

repugnant to the natural sense of justice, subversive of the principles of sound legislation, and conflict with a wholesome policy long established and sanctioned by the tests of experience and common consent, and above all, if they transcend the limits of the legislative authority as defined by the Constitution—a Court in such a case would not only be warranted, but bound, to receive the former and not the latter, as the true meaning of the Legislature, and to execute the act as thus interpreted. A decent respect for the Legislature, and a knowledge of the imperfection of language, and of the difficulty of expressing the meaning in such exact terms as to convey it with precision to the mind of another, would impose on the court presumption, as an irresistible one, that general phrases of dubious import were not used in the harsh sense attributed to them, to destroy existing rights, but in the milder one (of which they are susceptible) of regulating the future actions of the citizen, and prescribing a new rule for the subsequent acquisition or enjoyment of property.

These considerations would induce the Court cheerfully to adopt the construction of the act contended for by the counsel for the defendant were there nothing more in it than those parts on which he has animadverted. But there are other provisions which are absolutely inconsistent with this construction. To mention a few will be sufficient, since they are decisive. The first section enacts that the Sheriff and all persons holding elections at the next election for members of the General Assembly shall also hold an election for County and Superior Court Clerks in the same manner and under the same rules and regulations that they receive votes for members of the Legislature. The fourth section enacts that the clerks thus elected shall at the first term of their respective Courts which shall happen after their election, execute bonds for the faithful discharge of their duties, and take the oaths of office. It is thus seen that the enactment is, not that the elections thus to be held shall be from time to time thereafter in each county as a vacancy shall occur, but that a poll shall be opened at the then *next* general election, by *all* persons holding the elections for members of the Assembly. Indeed, no provision is made for any future election, not even one at the end of the four years, the prescribed term of service. In the event of a vacancy after one election, the Court is authorized to fill it, and the person appointed is to remain in office until the next annual election of members of the Assembly, or the first term of the Court of Pleas and Quarter Sessions thereafter; but even in that case the persons who shall have the right to vote are not designated, nor is any person authorized to receive votes. The very imperfection of the act, in making no provisions for subsequent elections, proves that the great (almost sole) end of it was an election to follow its passage almost immediately, in every county in the State, as the words of the first section in themselves import. It is, however, said that the act does not remove the existing clerks; and it is asked when

their offices become vacated—at the passage of the act, at the elections, at the qualification of the person elected, or at the next court? The answer is, that upon the grounds of public service and the silence of the act upon the subject of removals, the offices could not by construction, be deemed vacated until, according to the other provisions, another officer was ready to discharge the duties, or at least the time had arrived for him to enter on them. But by a necessary implication, when that time should arrive and the new clerk, whether elected by the people or appointed by the court, should have given bond and taken the oaths, the duties of the former clerk closed, and consequently his rights as recognized in the act also terminated. The admission of the new clerk is the expulsion of the old one, for both cannot be in at once, each having a right to the entire thing. Thus in every county a new clerk is to be elected and admitted in 1833, and, therefore, all the former clerks are then ejected. This conclusion is unavoidable, as it seems to the Court, and is the more to be relied on as it accords with the general sense of the community, evinced by the elections held throughout the State under the act. In not a single county was an election omitted, nor have any scruples been before expressed that they were held in conformity to the requirements of the Legislature.

In executing such a statute a Court is not at liberty to disregard or evade its mandate upon any of the grounds upon which are formed the rules for the interpretation of general terms of ambiguous import. These are rules for discovering the meaning of the Legislature, and not a justification for disobeying it. It is the province of the Court to expound their words so as to attain to the meaning; and to that end consequences and policy may be looked to. But when its meaning is discovered, the act as really intended is obligatory upon the mind, the will, and the conscience of the Judge, however mischievous the policy, harsh and oppressive in its enactments on individuals, or tyrannous on the citizens generally. Those are political considerations, fit to be weighed by and to influence the legislators; but if disregarded by them, their responsibility is to their constituents, not to the courts of justice. To a court, the impolicy, the injustice, the unreasonableness, the severity, the cruelty of a statute, by themselves merely, are and ought to be urged in vain. The judicial function is not adequate to the application of those principles, and is not conferred for that purpose. It consists in expounding the rules of action prescribed by the Legislature, and, when they are plainly expressed or as plainly to be collected in applying them honestly to controversies arising under them, between parties, without regard to the parties or consequences.

In an act under consideration, as far as it concerns the controversy between these parties, there is no ambiguity: the words are plain, the intention unequivocal, and the true exposition infallibly certain. We cannot, under the pretense of interpretation, repeal it, and thus usurp

a power never confided to us, which we cannot usefully exercise, and which we do not desire.

Since the meaning of the act cannot be doubtful, and according to that meaning Mr. *Henderson* had not, but Mr. *Hoke* had, the right to the office of Clerk at the time the Judge refused to admit the latter, the ground of the decision of the Superior Court, as stated in the record, recurs before this Court, and must now unavoidably be examined.

The act transfers the office of Clerk from one of these parties to the other, without any default of the former, or any judicial sentence of removal. The question is, whether this legislative intention, as ascertained, is valid and efficacious, as being within the powers of the legislature in the constitutions of the country, or is null, as being contrary to and inconsistent with the provisions of those instruments. To the determination of this question the judicial function is competent. It involves no collateral considerations of abstract justice or political expediency. It depends upon the comparison of the intentions and will of the people as expressed in the Constitution, as the fundamental law, unalterable except by the people themselves, with the intentions and will of the agents chosen under that instrument, to whom is confided the exercise of the powers therein delegated or not prohibited. Such agents are all public servants in this State, and the agency is necessarily subordinate to the superior authority of the Constitution, which emanated directly from the whole people. Legislative representatives may order and enact what to them may seem meet and useful, upon all subjects and in all methods, except those on which their action is restrained by the Constitution; and such order and enactment is obligatory alike on all citizens, including those who are by a public duty to execute the laws, as well as those on whom they are to be executed. Courts, therefore, must enforce such enactments, for they are laws to them by the mere force of the legislative will. But when the representatives pass an act upon a subject upon which the people have said in the Constitution they shall not legislate at all, or when upon a subject on which they are allowed to legislate, they enact that to be law which the same instrument says shall not be law, then it becomes the province of those who are to expound and enforce the laws, to determine which will, thus declared, is the law. Neither of the reasons which determined the will of the people on the one hand, nor the will of the representatives on the other, can be permitted to influence the mind of the Judge upon the question, when reduced to that simple point. His task is the humbler and easier one of instituting a naked comparison between what the representatives of the people have done, with what the people themselves have said they might do or should not do; and if upon that comparison it be found that the act is without warrant in the Constitution, and is inconsistent with the will of the people as there

declared, the Court cannot execute the act, but must obey the superior law, given by the people alike to their judicial and to their legislative agents.

Although this function be in itself comparatively humble, and does not call for those high attainments required for wise legislation, which as it affects all the diversified interests of society, ought to embrace a knowledge of all of them, and a just estimate of their relative importance to individual happiness and the common weal; yet the exercise of it is the gravest duty of a judge, and is always, as it ought to be, the result of the most careful, cautious, and anxious deliberation. Nor ought it to be, nor is it, ever exercised unless upon such deliberation the repugnance between the legislative and the constitutional enactments be clear to the Court, and susceptible of being clearly understood by all. In every other case there is a presumption in favor of the general legislative authority, recognized in the Constitution. The Court distrusts its own conclusion of an apparent conflict between the provisions of the statute and the Constitution, because the former has the sanction of the intelligence of the legislators, equal to the apprehension of the meaning of the Constitution, of their equal and sincere desire, from motives of patriotism and conscientious duty, to uphold that instrument in its true sense, and of the present and temporary inclinations, at least, of a majority of the citizens, which must be supposed to be known to their representatives, and to be expressed by them. But even these sanctions are not sufficient to overturn the Constitution, if the repugnance do really exist and is plain. For although the imputation is altogether inadmissible that the Legislature intended willfully to violate the Constitution, and still less that the people themselves contemplate violence to the instrument consecrated by their own voices and the consent of our ancestors, yet all the men are fallible, and in the dispatch of business, the heat of controversy, and the wish to effect a particular end, may inadvertently omit to scrutinize their powers, and adopt means, adequate, indeed, to the end, but beyond those powers. It ought not to surprise that such an event should sometimes happen. In other countries, such has been the practical difficulty of limiting the action of those in whose hands the powers of government are, that the effort to do so has been tacitly yielded up, and the will of the governors for the time being admitted to be the supreme law. In America, written constitutions, conferring and dividing the powers of government, and restraining the actions of those in authority for the time being, have been established, as securities of public liberty and private right. Still the agency of men is necessary to the operation of the government and the execution of its powers. The same frailties which cause men in power, through which they happen, in those countries where their own judgment and conscience are their only guides and restraints to enact laws unjust or oppressive, may here also be expected sometimes to have the same effects, although their acts should involve a violation of the Constitution. It is aston-

ishing that it does not oftener happen. That it does not is a proof not only of the essential value of written constitutions, but of the profound wisdom with which in ours, the powers of government are distributed: so as to secure in every department the agency of public servants, not only capable of comprehending, but so solicitous of obeying the constitution, in its true spirit, that they will not palpably violate it, nor incur the danger of doing so by the exercise of doubtful powers. Such praise is not only due to the Constitution for its wisdom, but the merit of scrupulously observing it must be allowed to those who have been called to legislate under it, and have not, in the whole course of the legislation of nearly sixty years, been urged by passion or betrayed by carelessness into the adoption of, perhaps, half a dozen acts incompatible with it. When, unfortunately, such instances do occur, the preservation of the integrity of the Constitution is confided by the people, as a sacred deposit, to the Judiciary. In the discharge of that duty the approbation of the Legislature itself is to be anticipated, for the principle of virtue which restrains them from a known and willful violation of it will induce them to rejoice at the rescue of the Constitution from their own incautious and involuntary infraction of it. It remains now to inquire, whether the act under consideration be of that character.

The office of clerk is recognized in the Constitution; but the tenure is not prescribed in any part of that instrument, and is doubtless within the discretion of the Legislature. Very soon after the adoption of the Constitution the act of 1777 (Rev., ch. 115), for the establishment of Courts of law, passed and provided that the courts should appoint clerks of skill and probity, who should execute official bonds and take certain oaths of office, and enacts in the fourth section, *that the clerks so appointed shall hold their offices during their good behavior therein*. In 1806 a new law passed which established a Superior Court of Law and a Court of Equity in each county, and provided that the Judges should appoint clerks, and clerks and masters in equity, of skill and probity for the Courts thereby established, who should be residents of the county at the passage of the act, and should continue to reside within the same during their continuance in office, and be subject to the same rules, regulations, and penalties as the clerks and clerks and masters of the Courts before established. Under this law the defendant was in April, 1807, appointed. The legal tenure of his office is therefore that created by the act of 1777, during his good behavior therein, and, as additionally qualified by the act of 1806, during his residence in the county of Lincoln. He has not been found guilty of any misdemeanor in office, but has discharged his duties faithfully; and it is not stated that he has removed from the county, but that he was qualified and therefore still resides there. The act of 1832 removes him from office and confers it on the applicant.

The great object of society is to enable men to appropriate among themselves the things which, in their natural state, were common. The purpose of the ordinary laws instituted by society is to protect the right to the things thus appropriated to one individual, from the acts and wrongs of other individuals. The right is yet exposed to the action of the mass of individuals composing the society; and against that there can be no effectual resistance, because it is sustained by physical force. There is, nevertheless, an intermediate power between that of an individual, or a few individuals on the one side, and the whole society on the other, from which danger to individual right may be apprehended. It is that power which resides in the person, or the body of persons, on whom is conferred the authority to act in the name and with the sanction of the supposed will of the whole community; which may be observed and used, contrary to the will of the community, for the purposes of private wrong. The body possessing that power we designate as the government of a country, whether it consists of one or more persons. The great and essential differences between governments, as distinguished from one another by their constitutions, consist of the greater or less personal liberty of the citizen, and the greater or less security of private right, against the violence of seizure of those who are the government for the time being. It is true, the whole community may modify the rights which persons can have in things, or at their pleasure abolish them altogether. But when the community allows the right and declares it to exist, that constitution is the freest and best which forbids the government to abolish the right, or which restrains the government from depriving a particular citizen of it. In other words, public liberty requires that private property should be protected even from the government itself.

The people of all countries who have enjoyed the semblance of freedom have regarded this and insisted on it as a fundamental principle. Long before the formation of our present Constitution, it was asserted by our ancestors on various occasions: and, in one sense of it, its vindication produced the Revolution. At the beginning of that struggle, while the jealousy of power was strong, and the love of liberty and of right was ardent, and the weakness of the individual citizen against the claims of unrestricted power in the government was consciously felt, the people formed the Constitution of this State, and therein declared "that no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed, or *deprived* of his life, liberty, or *property*, but by the law of the land." (*Bill of Rights*, sec. 10.) By the fourth section it is declared, "that the legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other."

In absolute governments, whether hereditary or representative, the division of powers, of government, is unimportant, because that body

in which resides the superior authority can, at will, make it supreme and absorb all other departments. It does not follow therefore, that because the British Parliament, whose supremacy is acknowledged, decides questions of private right and puts that decision, as it does its other determinations, into the form of a statute, that whatever it does is legislative in its nature. It can adjudicate and often does substantially adjudicate when it professes to enact new laws. That faculty is expressly denied to our Legislature, as much as legislation is denied to our Judiciary. Whenever an act of Assembly, therefore, is a decision of titles between individuals, or classes of individuals, although it may in terms purport to be the introduction of a new rule of title, it is essentially a judgment against the old claim of right, which is not a legislative, but a judicial function. It may not be easy to distinguish those powers and to define each, so that an act shall be seen at once to be referable to the one or the other. But I think that where a right of property is acknowledged to have been in one person at one time, and is held to cease in him and exist in another, whatever may be the origin of the new right in the latter, the destruction of the old one in the former is by sentence. If the act of 1832 had been confined in its terms to the clerkship of Lincoln, its judicial character would be obvious. If it had said that Mr. *Henderson* had forfeited his office, or had conveyed it to Mr. *Hoke*, or that after forfeiture Mr. *Hoke* had been duly appointed, or was by that act appointed, or had been elected by the citizens and was approved by the Legislature, and therefore the one should go out and the other go in, it would be plainly, as respects Mr. *Henderson's* title, an adjudication against it, although the subsequent investment of the title in Mr. *Hoke* would be legislative. Is the act the less of the former character because it does not recite an abuse by *Henderson*, or other cause of forfeiture? Is not such forfeiture assumed in it? For it is impossible, in the nature of things, that Mr. *Hoke* can be rightfully put in, unless the other be rightfully put out; and Mr. *Henderson* cannot rightfully be deprived unless the thing he claims was never property, or has ceased to be so, or unless he has parted from the property he had in it, by forfeiture or otherwise. This act, however, is not restricted to one county, but applies generally to all the clerks in every county; and it is said, for that reason, it cannot be a judicial act. It certainly, in that light, is wanting in precision and direct operation usually belonging to and distinguishing judicial proceedings. But, nevertheless, it partakes of that character in its operation on the former officers. If valid it compels the Courts to deprive the officers without further inquiry before a jury into the fact or legal sufficiency of any cause of forfeiture or removal. If the Legislature cannot itself adjudge a forfeiture directly, still less, it would seem, ought they command the courts to remove without any cause whatever. Nor does the extension of the sentence of expulsion to all the clerks in the State vary its character in this respect. The pro-

vision is not that of a law prescribing a rule of property, or modifying the extent of interest or the tenure prospectively, of which these offices shall be susceptible, or declaring that all property in them shall cease by the abolition of the offices themselves; but it is a provision by which the office, preserved in the law and still regarded as the subject of property, is taken, and merely taken from one man and given to another. The only sense in which that transaction cannot be called judicial is that no court of justice could have pronounced the judgment, under the existing laws, upon the state of facts in this case. To have authorized such a sentence by a court, further legislation would have been necessary. It is true, then, that the act is not purely judicial. But this is all that can be said in support of it. It is certainly true that it is not purely legislative, for it leaves the nature of the office as it was, in duties, powers, privileges, and emoluments, and confers it on one person as a lucrative place, *after taking it from the former possessor, who was before the acknowledged owner*. As far as the act is legislative, it is within the legitimate powers of the General Assembly; and it must be admitted that the elections allowed or commanded by it are constitutional and valid, and confer a good title on the persons elected, where a vacancy existed; and it may, perhaps, be admitted that they are also valid and confer a title whenever the preexisting rights of the incumbents shall expire by lapse of time, or cease by surrender, or by forfeiture for any cause declared by law.

The question is not now upon the validity of the title, under the new elections to the office, if vacant, or when it shall in future become so, but upon the right claimed under it to immediate induction, notwithstanding the office is already full by a previous legal appointment of another person. To sustain this claim, the previous appointment must be vacated, or the officer adjudged out. When the act proceeds to do this, it becomes, in that respect, an adjudication. Although it is not purely so in all its provisions, and may not in any be conclusively and definitely so, because it does not decide *inter partes* by name, yet it partakes of that nature, for the reasons already stated, and the prohibition of the Constitution is an imperative against the assumption of the judicial power by the Legislature in combination with their legislative authority as if the act were a single and simple one of direct adjudication. Creating a right or conferring it on one, when not already vested in another, is legislation. So prescribing the duties of officers, their qualifications, their fees, their powers, and the consequences of a breach of duty, including punishment and removal, are all political regulations, and fall within the legislative province. But to inflict those punishments, after finding the default, is to adjudge: and to do it, *without default*, is equally so and still more indefensible. The Legislature cannot act in that character; and, therefore, although their act has the form of law, it is not one of those *laws of the land*, by which alone a freeman can be *deprived of his property*.

Those terms, "law of the land," do not mean merely an act of the General Assembly. If they did, every restriction upon the legislative authority would be at once abrogated. For what more can the citizen suffer than to be "taken, imprisoned, disseized of his freehold, liberties, and privileges; be outlawed, exiled and destroyed; and to be deprived of his property, his liberty, and his life," without crime? Yet all this he may suffer, if an act of Assembly simply denouncing those penalties on particular persons, or a particular class of persons, be in itself a law of the land within the sense of the Constitution; for what is in that sense the law of the land must be duly observed by all and upheld and enforced by the courts. In reference to the infliction of punishment and diverting of the rights of property, it has been repeatedly held in this State and, it is believed, in every other of the Union, that there are limitations upon the legislative power, notwithstanding those words and that the clause itself means that such legislative acts as profess in themselves directly to punish persons or to deprive the citizen of his property, without trial before the judicial tribunals, and a decision upon the matter of right, as determined by the laws under which it vested according to the course, mode and usages of the common law as derived from our forefathers, are not effectually "laws of the land" for those purposes. Although, in some instances, the principle may have been misapplied, yet it seems, in every case in which it has come into discussion, to be admitted to be a sound one, and the true import of the Constitution. It was early asserted in an anonymous case in 1 *Hay. Rep.* 29. It was acted on again in *Den on dem., Bayard v. Singleton*, (*Martin's cases*, 48.), in 1787, in which it was held that the act for conferring titles derived by purchase from the commissioners of confiscated property, which directed that suits brought by claimants of such property should be dismissed by the court on affidavit of defendant that he was a purchaser from the commissioner, was void. It was elaborately considered in *University v. Foy*, (1 *Murph.* 58, 2 *Hay* 310.) and declared again in *Den on dem. of Hamilton v. Adams*, (2 *Murph.* 161.) In *Allen v. Peden*, (2 *Car. Law Rep.*, 638.), it was distinctly decided that an act of the Legislature emancipating a slave against the will of his owner was plainly in violation of the fundamental law of the land, and so void. And in *Doe on dem. of Robinson v. Barfield* (2 *Murph.* 391.), that a deed of a married woman, not executed according to the existing law, did not pass the title to lands, notwithstanding an act of the Legislature, passed after her death, enacted that it be good and effectual for that purpose.

It thus appears that in respect to every species of corporeal property, real and personal, the principle has been asserted and applied. It has been adjudged that the Legislature cannot seize the land or slaves of the citizen from him, and confer them on another: and in *Allen v. Peden*, *supra*, it was applied in a remarkable manner, and to the extent that the Legislature could not enact that the property in a slave should

cease and exist in no person—upon the ground, I presume, that it was not a general provision for the extinction of slavery, but the depriving of a single citizen of his property without any motive of public utility, or view to general expediency.

The sole inquiry that remains is, whether the office of which the act deprives Mr. *Henderson* is property. It is scarcely possible to make the proposition clearer to a plain mind, accustomed to regard things according to practical results and realities, than by barely stating it. For what is property, that is, what do we understand by the term? It means, in reference to the thing, whatever a person can possess and enjoy by right; and in reference to the person, he who has that right to the exclusion of others is said to have the property. That an office is the subject of property, thus explained, is well understood by every one, as well as distinctly stated in the law books from the earliest times. An office is enumerated by commentators on the law among *incorporeal hereditaments*, and is defined to be the right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging. (2 *Bl. Com.*, 36). A public office has been well described to be this: when one man is specially set by law, and is compellable to do another's business against his will and without his leave, and can demand therefor such compensation, by way of salary or fees, as by law is assigned, to the doing of which business no other persons but the officer, or one deputed by him, is legally competent. (*Carth., Leigh's Cas.*, 1: *Mumf.*, 475.) That the purpose of creating public offices is the common good is not doubted. Hence, most of the rules regulating them have a reference to the discharge of the duties and the promotion of the public convenience; they are *pro commodo populi*. Hence, they are not the subjects of property in the sense of that full and absolute dominion which is recognized in many other things. They are only the subjects of property, as far as they can be so safely to the general interest, involved in the discharge of their duties. This principle demands that different rights of property should be recognized in different offices. It is one of the ordinary rights of property to alien and dispose of it at pleasure; but that is inadmissible in public offices, because the public require a responsible person to answer for defaults. Besides, the power of alienation is not the test of property, for, doubtless, it is within the scope of legislative authority to restrict it or to deny it—as in the laws which prescribe the ceremonies necessary to the validity of wills, or conveyances of infants and married women, and which deny altogether the power of conveying, and which interdict all conveyances made in *mortmain*. It is another ordinary right of property to have the power of substituting another person to manage it, or to let it lie idle and unmanaged. But the former is not allowable in some offices and the latter in none. The chief executive office and judicial offices cannot be delegated, while subordinate ministerial ones may; for there would be no security that, in the for-

mer cases, the delegate would be competent, and no responsibility of the superior would be adequate to answer the consequences, though in the latter it is otherwise. But *non-user* is punishable in all public officers, and, at the election of the public, is a forfeiture. So a misdemeanor or corruption in office may be punished by judicial sentence in any manner prescribed by law, including a motion as for a forfeiture. These are all restrictions and penalties to secure the public service, which is the object in creating the office. But with these limitations and the like, a public office is the subject of property, as every other thing corporeal or incorporeal, from which men can earn a livelihood and make gain. The office is created for public purposes, but it is conferred on a particular man and accepted by him as a source of individual emolument. To the extent of that emolument it is private property, as much as the land which he tills, or the horse he rides, or the debt which is owing to him. Between him and another man, none will deny the right of property; for if one usurp an office which belongs to another, the owner may have an action for damages for the expulsion, for the fees of office received, and a remedy by *quo warranto* to inquire into the right of the usurper, and by *mandamus* to be himself restored. When we find these remedies established to enforce the right of admission into office, to secure the possession of it and its emoluments, we can no longer doubt that in law an office is deemed the subject of property, and valuable property to the officer, as well as an institution for the convenience of the people. If it be so, it falls within those provisions of the Constitution which secure private interests, and cannot be divested without some default of the officer, or the *cesser* of the office itself.

These are the general principles that lead the Court to the conclusion that the act of Assembly is invalid.

In opposition to them, several arguments have been urged, which the Court has anxiously considered, but without a change of opinion.

It was principally urged that whatever may be the rule of the common law, yet in this country and under our republican institutions public offices cannot be admitted to be private property, but the offices must be regarded as created solely for the public use, and therefore as subject to abolition when required by the general interest, of which the Legislature is exclusively to judge. This argument was illustrated by the additional observation, that by the contrary doctrine a system requiring officers for its execution, once fixed, would be unchangeably permanent, the absurdity of which was strongly insisted on and proved by the various changes in our judiciary system, which have all been acquiesced in, without a scruple of their constitutionality.

The Court does not perceive the least reason to doubt the validity of any one of those laws, nor to question any part of the propositions stated by the counsel, except that offices cannot be the subjects of private property. Undoubtedly, the creation of an office is a question of po-

litical expediency; so is the qualification of the officer; and so are his duties, prerequisites, punishment, and the tenure by which he holds his office. By consequence, they are the subjects of legislative regulation. And as the creation, so is the continuance of the office a question of sound discretion in the Legislature, of which a Court cannot question the exercise. If the Legislature increase his duties and responsibilities, or diminish his emoluments, he must submit, except in those cases in which the Constitution itself has declared the duty and fixed the compensation, because, in the nature of things, those are the subjects of such regulations as the general welfare may from time to time dictate, and the office must therefore have been conferred and accepted subject to such regulation. The Legislature is charged with the duty of securing the rights of suitors, and of all persons who have their business done only by the clerks, against loss through the person thus appointed by the law, as well as with the duty of securing a reasonable compensation to the officer for his time and labor. It is competent, therefore, to call for large official bonds, and to increase or diminish the fees; *for all that concerns the interest of the community at large*. So, also, it is yielded, for the like reasons, that the office itself, when it ceases to be required for the benefit of the people, may be abolished. There is no obligation on the Legislature or the people to keep up an useless office, or pay an officer who is not needed. He takes the office with the tacit understanding that the existence of the office depends on the public necessity for it, and that the Legislature is to judge of that.

But while these postulates are conceded, the conclusions drawn from them cannot be admitted. They are, that there cannot be private property in public offices; and, if there be, that the officer may be discharged at the discretion of the Legislature. Neither of these propositions is believed to be correct. The former has been already considered at large; and to what has been said may be added the provisions in our own Constitution guaranteeing adequate salaries to certain officers, and declaring that no person shall hold more than one *lucrative* office at one time. The latter by no means follows from the premises. It may be quite competent to abolish an office; and true, that the property of the officer is thereby, of necessity, lost. Yet it is quite a different proposition, that although the office be continued, the officer may be discharged at pleasure, and his office given to another. The office may be abolished, because the Legislature esteem it unnecessary. The common weal is promoted by that law; at least, it is the apparent object, and must be deemed to be the real one. But while the office remains, it is not possible that the public interest can be concerned in the question who performs the services incident to it. The sole concern of the community is that they should be performed, and well performed, by somebody. That this should be done by one particular person more than by another is not therefore a matter of expediency in any sense; and hence it cannot be the subject of legislation, that one man, who

has the faith of the public pledged to him, that he should have the employment for a certain term, and who has, upon that faith, entered upon the employment and faithfully executed it, should be deprived of it and supplanted by another man, who is to do and can do the community no other services than those already in course of performance by the former. It is true that a clerk, like all other officers, is a public servant; but he has also a private interest. He is not merely a public servant and political agent. If he were, and had no interest of his own, he might be discharged at pleasure. The distinction in principle between agencies of the two kinds is obvious. The one is for the public use exclusively, and is often neither lucrative, nor honorary, but is onerous. To be deprived of such an office is often a relief, and never can be an injury. The other is for the public service conjointly with a benefit to the officer. To be deprived in this last case is a loss to the officer. If it arise by the destruction of the office, it is a loss without an injury, because the right of the officer is necessarily dependent upon the existence of the office as an establishment in the political economy of the country. But if it arises from the transfer of the emoluments, the loss then becomes an injury; because that which belongs to one man, as a thing not simply of ideal, but of real value, is taken from him and given to another. The distinction which I am endeavoring to express and explain may be fully exemplified by the difference between the public agency exercised in appointing a clerk and that exercised in discharging the duties of a clerk. By the law, the Judges of the Superior Courts and Justices of the County Courts were authorized to appoint the clerks of their respective Courts. That power is an *office* in the extended sense of that word, which originally signifies *duty*, generally; but it is not a lucrative or valuable office. It was a duty to be performed exclusively for the public convenience, and with reference to it alone, without any benefit, immediate or remote, to the judges and justices as individuals, who were required, by oath, not to make any private advantage from it, but to give their voice for the appointment of only such persons as appeared to them to be sufficiently qualified, and do that without reward or hope of it, or any private motive whatsoever. The courts were, in this respect, not exercising a judicial function, nor serving for emolument, but were the mere ministers of the law, and naked agents of the body politic to the effect and end purely public. Such political agents the Legislature can discharge, whenever it shall appear to them that the end can be better effected through other agents. But when the country has through those agents appointed a person to the office of clerk, though he also is a servant of the public, yet he is something more than a naked, uninterested, political instrument. For the term for which the law assures the office to him, he claims and can claim to continue to be the agent of the public to discharge the duties of that place, while there are duties remaining to be discharged, and he is

ready and willing to perform them. Nor is there anything in our Constitution, the form or nature of our government, to change the character of this right. There is no reason why a public office should not be given during good behavior. The services are what concern the country; and they may be expected to be best done by those whose knowledge of them, from time and experience, is most extensive and exact. Some offices can, under the Constitution be granted or conferred for no other term but that of good behavior. Such is the provision respecting the office of a Judge and Justice of the Peace. Certainly that is not introduced solely for the benefit of the persons holding those offices, but upon the great public consideration that he who is to decide controversies between the powerful and the poor, and especially between the government and an individual, should be independent, in the tenure of his office, of all control and influence which might impair his impartiality—whether such control be essayed through the frowns of a bad man or through the adulation of an artful one, or such influence be produced by the threats of the government to visit nonconformity to their will by depriving him of office or rendering it no longer a means of livelihood. For these reasons the Constitution has fixed the tenure of the judicial office to be during good behavior. The people have said that the liberty and safety of the citizen required that it should not be held upon any other tenure. It is clear, therefore, that our ancestors did not entertain the notion that such a tenure was not consistent with our institutions generally. It is true that it does not put clerks upon the same basis. There was not the same reason for it. The public interest did not require that any law should be laid down to the Legislature as to the tenure of those officers; but it was left to their discretion, as expediency might from time to time require it to be altered. It was, therefore, in the power of the Legislature to confer such offices for life, or during good behavior, or during pleasure, or for any term of years determinable with life at an earlier day. For an absolute term of years it could not be granted, as upon the death of an officer it would in that case go to his executor, which would be inadmissible, since the office concerns the administration of justice, and an incompetent person might be introduced into it. It, however, pleased the Legislature to make the tenure during good behavior. When they did so, it was quite within their competency to alter it subsequently. But such alterations must operate prospectively and as regulations for future appointments and further enjoyment. As to those to whom the grant was made for life, an estate, a property vested, which cannot be divested without default or crime.

This course of reasoning in some degree anticipates some other arguments urged for the plaintiff, which, however, it may be more becoming to state distinctly and consider more particularly.

It was said that as the tenure was necessarily at the will of the Legislature, he who took the office received it subject to such alterations

of tenure, as well as of duties and emoluments, as the Legislature might prescribe. And the distinction between the tenure of the judicial office, as being constitutional and unalterable, and that of a clerk, as being statutory and therefore alterable, was strongly urged.

The distinction is admitted, but not the argument derived from it. The Constitution restrains the Legislature from appointing a Judge or Justice of the Peace except during good behavior. It does not restrain them in respect to a clerk, but allows that office to be given for a longer or shorter term, as may be more expedient. The question is, What is the effect of a grant for a particular period. Can the duration be afterwards lessened to the prejudice of a grantee? We think not, because he acquired a property. That it may be lessened in reference to new appointments cannot be contested; but that it can, in respect to existing ones, involves the propositions already discussed, that an office is not the subject of private property, and that private property may be seized without judicial sentence, and even without compensation. This property does not differ from that in other subjects, as far as it is allowed at all. In lands, there may be estates in fee, for life, or for years. The Legislature may grant the public domain in any of those estates; but if it please them once to grant it, the grant is irrevocable and the estate cannot be resumed. It becomes the land of a citizen and cannot be taken from him by law without the action of his peers as a jury to pass on the facts and of a Court to determine the title. It is further said that the distinction between these offices as derived from the Constitution and a statute is exhibited in the power to alter the compensation; that the clerk must be considered as holding office at the will of the Legislature, while the fees depend entirely on their pleasure; whereas, a judge who holds his office independent of that will, is necessarily entitled to his salary as stipulated to be paid to him. Upon this latter proposition a person in my situation cannot be expected to express, and cannot properly express, an opinion. But taking it to be true, it does not establish the point to which it is adduced. If it be true, it arises as an incident to the independent tenure of the judicial office fixed by the Constitution. No such object was in view in respect of a clerical office. All that is intended is that the Legislature shall allow such fees as are adequate to the livelihood of the clerk, and as a compensation for his labor. It is supposed that a sense of justice will ever influence the Legislature to do this and if not, that the public interest will; for this argument assumes that the office is still necessary to the public convenience, and continues, by law, to exist. Without a competent officer with a competent livelihood, the office must be unfilled, except by compulsion, and if occupied, the duties will be unperformed. No danger, therefore, could have been apprehended that the legislation on the subject would be unjust to the officer—who in the line of his official duty can never be called to do an act which will render him obnoxious to the government or the men in power of his day. Nor

was the danger more to be expected that the public interest would suffer by the Legislature not providing proper and sufficient offices, in which the business of the citizens might be transacted; and if such inconvenience should at any time arise, it could be only temporary, and would be redressed upon another election of representatives. The analogy between those offices in this respect does not therefore exist, as supposed; and it may well be that the Legislature can regulate the emoluments and prescribe the duties and punishments of the clerk, without possessing the power of depriving him of his office merely for the sake of benefiting another person.

Nor do those powers, nor that of abolishing the office altogether, which are readily conceded to the Legislature, involve the further one of depriving the officer of his office, while it continues.

It has been urged that it is vain and futile for the Court to refuse to execute this law, and to uphold Mr. *Henderson's* title, because if the Legislature be determined in their purpose, they can be still more unjust by destroying the office itself, or taking away the fees.

There are several answers to that argument. The abolition of the office depends upon the necessity for it in the opinion of the Legislature and of the people. If useful, doubtless it will be preserved; and if it be not, private interest must yield to general convenience. But admitting it to be necessary, and that Mr. *Henderson* is constitutionally entitled to it during his good behavior, it is not to be expected, nor apprehended—it cannot be imputed to the Legislature, that it will, *for the indirect purpose of expelling by starvation*, render the office more onerous, without adequate compensation, or take away the compensation altogether, while the duties remain as they are. If such a law were to pass, it would itself be unconstitutional—that being the object. If the purpose were declared in the law in such terms that the Court could say that the act was passed upon no other, the same duty would then be imposed on the Court which we are now discharging. But if the law be couched in general terms, so that the Court, which cannot inquire into motives not avowed, could not see that the act had its origin in any other consideration but public expediency, and therefore would be obliged to execute it as a law, still it would not, in reality, be the less unconstitutional, although the Court could not pronounce it so. It would be law, not because it was constitutional, but because the Court could not see its real character, and therefore could not see that it was unconstitutional. It would not be constitutional as a provision which deprives a citizen of his property, but it would be held so because we should be obliged to regard it as not having such a provision. The argument is therefore, unsound in this: That it supposes (what cannot be admitted as a supposition) the Legislature will designedly and willfully violate the constitution, in utter disregard of their oaths and duty. To do, indirectly, in the abused exercise of an acknowledged power not given for, but perverted to that

purpose, that which is expressly forbidden to be done directly, is a gross and wicked infraction of the Constitution; and the more so because the means resorted to deprive the injured person, and are designed to deprive him, of all redress, by preventing the question becoming the subject of judicial cognizance. But that is not the only test of the constitutionality of an act of the Legislature. There are many laws palpably unconstitutional which never can be made the subjects of legal controversies. Not to allude to the causes which have been recently the themes of the bitterest political controversies, several instances of much simplicity may be adduced from our State government. The Constitution of this State provides that the Governor, Judges, Attorney-General, Treasurer, and other officers shall be elected by the General Assembly by ballot, and that certain of them shall have adequate salaries during their continuance in office. Suppose the Legislature to refuse to elect those officers; or to give them salaries; or, after assigning them salaries in the statute, to refuse to lay taxes, or to collect a revenue to pay them. All these would be plain breaches of constitutional duty; and yet a court could give no remedy, but it must be left to the action of the citizens at large to change unfaithful for more faithful representatives. Yet no one will say that the Legislature can by law remove the Governor, or a Judge, or any other head of a department, because they can unconstitutionally refuse to provide salaries for them, and the courts cannot compel the raising of such salaries. Nor can it be said, because there cannot be such compulsion, that therefore the law is constitutional. All that can be said is, that such is the imperfection of all human institutions that it is not possible to anticipate and provide against all vices of the heart, more than all errors of the head; and that after every precaution, much reliance must be placed in the integrity of our fellow-men, and that such confidence is liable to be abused. But I think it may safely be assumed as is done in the Constitution, with all the responsibilities of the legislative representatives to their constituents under frequent elections, with all the clear declarations of the rights of the citizen in that instrument, with the division of the powers of government made in it, whence arise the powers and the duty of the judiciary to ascertain the conformity of a statute with the Constitution: that with all these guards against abuse, the danger of a willful and designed violation is never to be apprehended. No arguments, therefore, in favor of the necessity of executing a particular act, apparently inconsistent with the Constitution, can be drawn from any supposed ability of the Legislature to effect the same end by indirect means, which are beyond the cognizance and control of the judiciary. When such an abuse shall occur, it will devolve on the people themselves to correct it, and not on us as a portion of their subordinate agents.

I have omitted to consider in its proper place another objection made by the counsel for the defendant, and must therefore now take notice

of it. It has been said that the obligation to continue in office ought to be mutual to be complete, and that such is not the case, because the officer may at his pleasure resign. The argument on behalf of the power to discharge an officer assumes the right of the officer to discharge himself, and in that point differs entirely from the law as it stands in the conception of the Court. An officer may certainly resign; but without acceptance, his resignation is nothing, and he remains in office. It is not true that an office is held at the will of either party. It is held at the will of both. Generally resignations are accepted; and that has been so much a matter of course with respect to lucrative offices as to have grown into a common notion that to resign is a matter of right. But it is otherwise. The public has a right to the services of all the citizens, and may demand them in all civil departments as well as in the military. Hence there are on our statute-books several acts to compel men to serve in offices; as the Act of 1741, which inflicts a penalty on one appointed a constable and neglecting or refusing to qualify; the Act of 1777; which compels a sheriff to serve at least one year; the various acts directing the appointment and services of overseers of the roads, and the recent statutes restraining certain militia officers from resigning under five years, and the like. Every man is obliged, upon a general principle, after entering upon office, to discharge the duties of it while he continues in office, and he cannot lay it down until the public, or those to whom the authority is confided, are satisfied that the office is in a proper state to be left, and the officer discharged. The obligation is therefore strictly mutual, and neither party can forcibly violate it. If, indeed, the public change the emoluments of office, it is another question whether that be not an implied permission for the officer to retire at his election, unless the contrary be provided in the law; for I cannot doubt that the Legislature has the perfect power, if it choose arbitrarily to exercise it, of compelling—not, indeed, a particular man designated in a statute by name, but any citizen elected or appointed, as by law prescribed, to serve in office, even against his will. I have mentioned some instances in which it is done; and there is no reason why, making due compensation, it may not be done as to all offices. It is true, that non-user of an office is a forfeiture of it, and that is spoken of as a penalty and punishment in itself. But it is not the only punishment, and is a punishment only when the office is itself valuable. Such a forfeiture does not discharge the officer, but at the election of the sovereign, for that would be to say that an onerous office could not be conferred. The officer may be punished by removal for non-user, as a forfeiture, or he may be kept in office and punished personally for non-user as a crime.

It is lastly said that it can be no injury to remove an officer, because the salary is taken to be but a just compensation for his time and labor, and when the public do not take the latter the officer can have no demand for them. This position is rather an artful than a solid or fair argument. It is true that to the officer is left the command of his own time, and the application of his own labor and the fruits of it. But it is not true that he does not suffer by being deprived. Of what is he deprived? Of an employment—the immediate source of livelihood—the preparation for which has been the great business, it may be, of his life, to which he has served a long apprenticeship, and to which he has devoted himself, abandoning other lines of life, or other roads to fortune which were once open to his free choice. True, he is free to work at other employments; but he is fit for none; he knows but this. He is in the situation of one bred to the agriculture of our country, to whom the Legislature should say: "Till the ground no more; go and spin silk, or weave muslin." His labor is not the subject of conscription; but he hangs a burden on himself, because the only employment to which he is competent is denied him. The loss is therefore undeniable. The only question is, whether it be such an one as the Legislature can rightfully inflict. We think, as already stated, that they may, if it be merely the incidental consequence of a general law really passed for the purpose of abolishing useless offices as a species of governmental institution; but that they cannot, if the offices are retained and the officer is deprived of his property therein, without default and without trial, for the single and sole purpose of giving it to another.

It became the Court to consider this subject dispassionately in all its bearings. We have done so, without a desire to swerve to either side from the direct line of the law and the Constitution, but with the utmost respect for the opinions and intentions of those from whom we differ. But having reached the conclusion above stated, upon which no member of the Court doubts, we are obliged to pronounce it as a duty not to be evaded, and, being a known duty, we do so without reluctance, in support of the right of the citizen and of the inviolability of the fundamental law of the land.

The judgment of the Superior Court must therefore be affirmed.

Per Curiam.

Judgment Affirmed.

OPINION IN MILLER V. IRVINE

*William J. T. Miller v. Sarah Irvine.*¹

The Act of 1819 (Rev., ch. 1019), "to make void parol contracts for the sale of lands and slaves," does not require that the consideration of the contract should be set forth in the written memorandum of it.

Assumpsit brought to recover damages for the breach of the following written contract, viz.:

"I, Sarah Irvine, do agree to convey to William J. T. Miller, a certain piece or parcel of land adjoining the tract of land which said William J. T. Miller bought of me. The lines to run as follows: to begin with the line where it crosses the main big road leading to McSwain's Ford on First Little Broad River, thence southwest course with the edge of the old field down to the Still-house Branch; thence up said branch to the said William J. T. Miller's line of the three-hundred-acre tract. 15 January, 1829.

"The condition of the above obligation is such that if the three-hundred-acre tract which the said William J. T. Miller bought of the said Sarah Irvine does hold out to be four hundred acres after being surveyed, the above obligation of Sarah Irvine is to be void and of none effect. 15 January, 1829."

On the trial at Rutherford, on the last circuit, before his Honor, Judge Martin, after the plaintiff had proved the execution of the contract, his Honor held that, no consideration being mentioned in it, the action could not be maintained. The plaintiff then proposed to prove by parol evidence that the contract was founded on a valuable consideration. His Honor refused to receive the testimony, saying, "that to do so would be to alter, or add to, the written contract." The plaintiff was nonsuited and appealed.

No counsel appeared for either party.

RUFFIN, C. J. The question presented in this case is, whether the consideration on which a written parol promise is founded must appear in the instrument itself or in some other writing, or may be proved viva voce. At the common law agreement not under seal requires a consideration to support it; but the consideration might be proved in any manner in the party's power—by the same instrument, or by a separate one, or by witnesses. The question, therefore, depends upon the Act of 1819. (Rev. ch. 1016.) It is a new question in our courts, and as it involves important consequences, and is one upon which there has been, upon similar statutes, much conflict of opinion in other courts, we have very deliberately considered it. The majority of the Court is of opinion that the statute does not operate upon the case, and that the

¹ 18 N. C., 103.

consideration may be proved since, as before the statute. The act does not, on the one hand, give validity to an agreement, merely because it is written; but leaves the common law in force, which makes a consideration indispensable to its validity. So, on the other hand, while the common law requires such consideration, the statute does not prescribe that it shall be proved otherwise than at common law. If an alteration of such magnitude had been intended, as that no consideration should be required when there was a writing; or that, if required, the writing should set it forth; we think each would have plainly appeared by distinct enactments, and that neither would have been left to doubtful inference. The provisions actually made seem to have the obvious purposes of protecting persons from being drawn inconsiderately into sudden engagements touching the important properties in lands and slaves, and against the misunderstanding and misrepresentations of the extent of such engagements, by witnesses. Hence the contract must be put into writing and signed by the party *to be charged therewith*. It need not be signed by both parties; the one charged by the contract must sign it, and his signature shall suffice to charge him. If both are chargeable by the contract, as written, then both must sign it, to charge both. But if one only is to be charged on it, there seems to be no reason why it should contain any matter but such as charges him; that is, such stipulations as are to be performed on his part. It does not vary his contract, explain or alter it, to prove a consideration aliunde; for at the common law, such explanations, or alterations by parol evidence were as inadmissible as they could be. This proves that the consideration is *no part of the contract*, but only *the inducement to it*; and that the case is not more within the words than the spirit of the statute. To us it seems there could be no doubt upon the construction of the act, upon its terms and upon principle, were there no decisions either way. They have embarrassed us; but considering them upon their intrinsic merits, the weight of them is on the side to which our own opinion inclines. They are all regarded with respect; but, none of them having authority in this State, the respect must be in proportion to the degree of conviction produced on the mind by the reasoning of those who made them.

In England it must now be deemed the settled law that under the statute of 29 Charles II. contracts for the sale of land, in consideration of marriage, and to answer for the debt of another, must state the consideration. The point was first decided in 1804, in the case of *Wain v. Warlters*, 5 East, 10, and has been followed by the cases of *Saunders v. Wakefield*, 4 Barn. & Ald., 595 (and 6 Eng. C. L., 530), and *Jenkins v. Reynolds*, 3 Brod. & Bing., 11 (and 7 E. C. L., 328), and *Lyon v. Lamb*, in the Court of Exchequer, Fell on Guar., 318. The latter cases may, however, be regarded as decisions by compulsion under the authority of *Wain v. Warlters* as the leading one. They are but submissions to that judgment, which was that of the Court of King's Bench. No trace of

the doctrine can be found earlier than 1804. That fact has much more authority than the decisions of any court, or of a Superior Court followed by those which are inferior. The silence of all the courts and counsel, from the reign of Charles II, to the year 1804, implies that the law was deemed certain during that long interval. On which side of this question was the professional impression? It cannot be said that we have no means of ascertaining, and that the question was not made, because the statute was deemed plain, for in *ex-parte Minet*, 14 Ves., 189, Lord Eldon said there was a variety of authorities directly contradicting *Wayne v. Warlters*; and in *ex-parte Gardom*, 15 Ves., 286, he says, "until that case was decided I had always supposed *the law to be clear* that if a man agreed in writing to pay the debt of another, it was not necessary that the consideration should appear in the writing." I do not cite Lord Eldon's words merely to put his opinion as authority upon the question of construction against that of the Judges of the King's Bench, but for the sake of his testimony as to what was understood to be the law up to the time of the case in which that construction was rendered authoritative in that country. It cannot be denied that if it was the true one there, upon the word *agreement* in the statute of Charles, it is equally true here, upon the word *contract* in our act. But Lord Eldon is not the only English Judge whose opinion does not accord with that decision. In *Egerton v. Matthews*, 6 East, 307, which arose on sec. 17, Statute Frauds, the decision was irreconcilable with it. That section provides "that no *contract* for the sale of goods shall be allowed to be good unless some note or memorandum in writing of the said *bargain* be made and signed by the parties to be charged with *such contract*." The contract, then, was simply a bill of parcels with the prices; and yet it was held valid. The case was tried before Lord Ellenborough, at Nisi Prius, who had presided in *Wain v. Warlters*, and thought the case within that precedent, and so ruled. But when the question was argued in Bank, he and the other Judges distinguished it upon the word *bargain*, instead of *agreement*. If there be a difference between "*bargain*" and "*agreement*," I am unable to comprehend it. But that difference could not exist in the context of sec. 17, which calls *the bargain* "*such contract*," which surely must be as comprehensive as "*agreement*." In this country we find as little satisfaction expressed with that case as in England. Soon after the decision of *Wain v. Warlters* reached us the point was made in the courts of New York and decided without great consideration, in conformity to it; and after being thus established, has been followed in that State until it is there, as it ought to be, settled law. But Chancellor Kent, then Chief Justice, dissented from it in *Leonard v. Vredenburg*, 8 John., 29. In the other courts of the Union, we have been unable to find any willing recognition of the doctrine; and in several of the States it has been positively denied after full argument at the bar and from the bench. In *Violett v. Patton*, 5 Cranch, 142, the Supreme Court of the United

States evaded the force of *Wain v. Warlters*, upon the words "*promise or agreement*," in the statute of Virginia; but I think, that "*promise*" and "*agreement*" there, are not used to describe different instruments or those of different obligations, but are obviously referred to the same thing; the *promise* being the *agreement vice versa*. This decision evinces a great unwillingness to deny directly the authority of an adjudication, but the still greater unwillingness to follow it, as a reasonable one. In Connecticut, *Judge Swift* has opposed to it an able course of reasoning, which must greatly influence a dispassionate mind, not bound down by authority. (Note to *Wain v. Warlters*, in the American edition of East). In South Carolina the question is still reserved for decision by the Court; the case of *Wain v. Warlters* being expressly put in doubt. In Massachusetts the whole law, and all the cases up to 1821, were reviewed in *Packard v. Richardson*, 17 Mass., 122; in which *Chief Justice Parker*, in an elaborate opinion denies its correctness, as *Chief Justice Parsons* had before done in *Hunt v. Adams*, 5 Mass., 358, and overrules it. These last decisions are entitled to the more respect, because in Massachusetts the statute of Charles had been literally reenacted as early as the year 1692; and, as in England, no question had been made upon it as altering the rule of the common law in respect to setting out the consideration in the written memorandum. But those eminent Judges declare, that from their earliest recollection a doubt had never been entertained upon the point.

As I before remarked, the weight of authority thus seems to be against *Wain v. Warlters*. At all events, the authority of that case is at least neutralized, and this Court is free to exercise its own judgment upon the question. We have done so; and the majority of the Court is of opinion that the decision of his Honor is erroneous, and that the judgment must be reversed.

It may be proper to say that, if in any case, the statute requires the consideration to be stated, it does so in all. We do not perceive a difference between executed, and executory considerations in this respect, as there is the same danger of perjury in proving either. Our opinion goes on this: that the statute does not extend to the consideration at all, but that the fraud and perjury provided against, is that which charges the defendant to do what he never contracted to do.

Gaston, J., concurred.

Daniel, J., *dissentiente*. The Act of Assembly passed in the year 1819, declares, "that all *contracts* to sell or convey lands, tenements or hereditaments, or any interest in or concerning them, shall be void and of no effect, unless such *contract* or some memorandum of note thereof, shall be put in writing and signed by the party to be charged therewith, or some other person thereto by him lawfully authorized; except contracts for releases not exceeding the term of three years." The question

to be decided is, whether the consideration is such a part of the contract, as must necessarily be set forth in the writing to make it good and available under the statute?

The British Statute of Frauds, 29 Charles II, enacting upon this subject, makes use of the word *agreement* instead of the word *contract*, as is mentioned in our statute. The words are synonymous, and the same construction which has been put upon the British statute, I think, ought to be placed upon ours. *Wain v. Warlters*, 5 East, 10, decided in 1804, was an undertaking to pay the debt of another. The written engagement signed, was in these words: "Messrs. Wain & Co.: I will engage to pay you by half-past 4 this day, £56, and expenses on bill, that amount, on Hall. John Warlters, 30 April, 1803." It was objected that the writing did not express the consideration of the defendant's promise, and that this omission could not be supplied by parol testimony (which the plaintiff proposed calling), and that for want of such consideration appearing upon the face of the written memorandum, it stood simply, an engagement to pay the debt of another without any consideration, and was therefore *nudum pactum* and void. Lord Ellenborough, upon a view of the statute of frauds which avoids any special promise to pay the debt of another, "unless the *agreement* upon which the action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith," etc., thought that the term *agreement* imported the substance, at least, or the terms on which *both* parties consented, and included the consideration moving to the promise, as well as the promise itself; and the agreement in this sense, not having been reduced to writing, for want of including the consideration of the promise, he thought it could not be supported by parol evidence, which it was the object of the statute to exclude; and therefore nonsuited the plaintiff. A rule *nisi* was obtained for setting aside the nonsuit and granting a new trial, on the ground that the statute only required the promise or binding part of the contract to be in *writing*, and that parol evidence might be given of the consideration, which did not go to contradict it, but to explain and support the written promise. After argument in the King's Bench, the rule was discharged. Lord Ellenborough in delivering his opinion, said: "It seems necessary for effectuating the object of the statute that the consideration should be set down in writing, as well as the promise, for otherwise the consideration might be illegal, or the promise might have been made upon a condition precedent, which the party charged may not afterwards be able to prove, the omission of which would materially vary the promise, by turning that into an absolute promise, which was only a conditional one; and then it would rest altogether on the consciences of the witnesses to assign another consideration in the one case and to drop the condition in the other, and thus to introduce the very frauds and perjuries which it was the object of the act to exclude, by requiring

that the *agreement* should be reduced into writing, by which the consideration as well as the promise would be rendered certain." All of the other Judges gave their opinions, and concurred with his Lordship. The rule in this case was followed in New York, in *Sears v. Brink*, 3 John, 210; *Leonard v. Vredenburg*, 8 John., 29. Also in New Hampshire, *Neelson v. Sanborne*, 2 N. H., 414. But in Massachusetts, where the statute of frauds is nearly a *verbatim* copy of the British statute, the rule is rejected, and parol evidence admitted to prove the consideration. *Lent v. Padelford*, 10 Mass., 230; *Packard v. Richardson*, 17 Mass., 122. So in New Jersey, *Barkley v. Beardsley*, 2 South., 570. In Connecticut, *Judge Swift* has made a vigorous attack upon *Wain v. Warlters*. (Note to the American edition of East). *Chief Justice Parker*, in delivering his opinion in *Packard v. Richardson*, which was in 1821, predicted that *Wain v. Warlters* would not be recognized as law, if the principle ever came to be again examined in any of the Superior Courts at Westminster. In this he was mistaken, for in that very year the question was again brought before the King's Bench, in the case of *Saunders v. Wakefield*, 4 Barn. & Ald., 595 (and 6 E. C. L., 530), when all the authorities were referred to by counsel, and the Judges gave their opinions *seriatim*, and affirmed the doctrine laid down in the case of *Wain v. Warlters*. They say that by the fourth section of the statute of frauds an agreement to pay the debt of another must, in order to give a cause of action, be in writing, and must contain the consideration of the promise as well as the promise itself, and parol evidence of the consideration is inadmissible. *Bayley, Judge*, said: "I find, too, that the word agreement in this clause is coupled with contracts of marriage, and for the sale of lands; now, in those cases it is clear that the consideration must be stated. For it would be a very insufficient agreement to say, 'I agree to sell A B my lands', without specifying the terms or the price; and if those could be supplied by parol evidence we would let in all the mischief against which the statute meant to guard, viz., of having important parts of the contract proved by parol evidence." *Holroyd, Judge*, said "that upon an agreement upon consideration of marriage, or a contract for the sale of lands, it is quite clear that the consideration must be stated in writing." In *Jenkins v. Reynolds*, 3 Brod. & Bing., 11 (and 7 E. C. L., 328), a few months after, in the Common Pleas, the same rule was adopted. In 1807, in the case of *Lyon v. Lamb*, Fell Mer. Gua., 318, the Court of Exchequer admitted the doctrine in *Wain v. Warlters*. The question has been twice brought immediately to the notice of the Court in South Carolina, but no direct decision has there been given. In *Stephens v. Winn*, 2 McCord, 372, no consideration was expressed in the face of the note, nor was there any offer to prove it by other evidences. In a case in 3 McCord, 158, there were two written papers, and the Court was of the opinion that the one referred to the other, and the consideration

by that means was made to appear in writing. The Court seem to think that the doctrine in *Wain v. Warlters* should be confined to contracts executory on both sides; and if the consideration has been executed, then the terms of the contract on the other side being in writing, could be enforced, although it did not contain the consideration. They proceed to say that, "If A, in consideration that B will undertake to build him a house, promise to pay him so much money, and B does undertake to build the house, their minds meet about the matter, and this constitutes an agreement; and if the consideration of a promise to pay the debt of another consists of something moving at the time, and to be afterwards performed, it might perhaps comport more strictly with the letter of the act that it should be set out on the face of the promise as constituting a part of the agreement. But if B, in consideration that A had advanced him so much money, undertakes to build the house, here the undertaking is altogether on the part of B; the *aggregatio mentium*, the meeting of the minds, is past and gone, and the contract consists altogether of the promise to build the house; and in such a case the requisitions of the statute would seem to be fulfilled, if the promise itself was in writing; although, like every other contract, to make it obligatory, it must be founded on a good consideration, which might be proved by parol." But the Court then proceed to say they "have thought it advisable to reserve the determination of the question for some further occasion, when it is possible more light may be thrown upon it." These remarks were made in the year 1825, and without having had the cases of *Saunders v. Wakefield* or *Jenkins v. Reynolds* brought to their notice. All the cases referred to in the opinion delivered, except *Sears v. Brink*, are cases which do not profess to overrule *Wain v. Warlters*, but contain *dicta* throwing doubts on that case. I do not know the wording of the statute of frauds in South Carolina, but if it uses the language of the statute of Charles II, I am at a loss to see how the Court could have entertained the idea that as wide a door was not opened to let in frauds and perjuries, when the *amount* of money *actually paid*, or the *quantity*, of articles *actually delivered*, might be permitted to be proven by parol, as when the amount of money or quantity of articles were to be *hereafter paid or delivered*. It seems to me that the same mischiefs intended to be prevented by the statute would as well arise in the first class of cases as in the latter. It is a distinction which I nowhere find in any of the authorities, and I cannot bring my mind to the conclusion that the distinction is a sound one.

Without a good consideration no contract could be enforced at the common law. The framers of the statute well knew this. Can it, therefore, be supposed that the Legislature, when it passed the statute to guard the property and rights of the subject against the frauds of parties and the perjury of witnesses, did not contemplate that the whole terms of the agreement or contract should be in writing, as well the

consideration to be paid, or which had been paid, as the engagement on the other side? It seems to me that it did, and that the weight of authority is on that side of the question. I therefore am of the opinion that judgment must be affirmed.

Per Curiam.

Judgment reversed.

CHIEF JUSTICE RUFFIN'S REMARKS ON THE DEATH OF JUDGE GASTON¹

The Court unites with the Bar, in lamenting the calamity which has fallen on us; and is ready to concur in whatever may honor the memory of our deceased Brother, or express a sympathy with his bereaved family.

The loss, indeed, is that of the whole country; and it will doubtless be deeply felt and deeply deplored, by the whole country. But to us, who have been connected with him here, it is peculiarly severe.

Having been closely associated in private intercourse, and in the discharge of a common public duty, for the last ten years, we have had the best means of knowing and appreciating his personal virtues, his abilities, his attainments, and judicial services.

We know, that he was indeed a good man and a great Judge.

His assistance, in the discharge of our official duties, is cheerfully and gratefully acknowledged by us, who have survived him. In our opinion, his worth, as a minister of justice, and expounder of the laws, was inestimable; and we feel that, as a personal friend, his loss cannot be supplied.

The Court directs the proceedings of the Bar to be entered on the minutes, and will, in other respects, comply with the requests expressed in them.

CHIEF JUSTICE RUFFIN'S REMARKS ON THE DEATH OF JUDGE DANIEL²

The surviving Members of the Court, receive with deep sensibility, the proceedings of the Bar in commemoration of our late and lamented Brother. They but express our own emotions upon that melancholy event, and are no more than a just tribute to the unsullied purity of his personal character, his learning, and long and useful official labors.

He served his country, as a Judge, through the period of, very nearly, thirty-two years; and he served acceptably, ably, and faithfully.

He had a love of learning, an enquiring mind, and a memory uncommonly tenacious; and he acquired and retained a stock of varied and extensive knowledge, and, especially, became well versed in the

¹From 38 N. C., 504.

²From 40 N. C., 465.

History and Principles of the Law. He was without arrogance or ostentation, even of his learning; had the most unaffected and charming simplicity, and mildness of manners, and no other purpose in office, than to "execute justice and maintain truth"; and, therefore, he was patient in hearing argument, laborious and calm in investigation, candid and instructive in consultation, and impartial and firm in decision.

With these properties and his long experience, it is no wonder, that he should have proved so eminent on the Bench, as to endear himself to his Associates, gain the high respect and regards of the Profession, and the confidence of the Country. He did so to such a degree, that few men, if any, were in life more honored among us, or in death, we think, will be more deplored.

Fully sharing in these sentiments and feelings, the Court readily joins in the expression of them, and yields to the wish of the Bar, that these proceedings should be entered on the minutes, and also communicated to the bereaved children of our late venerated Friend and Brother.

OPINION IN RAILROAD V. DAVIS¹

Raleigh and Gaston Railroad v. Richard Davis.

1. Whether the legislature can in any case take private property for the use of the public, without providing compensation for it? Quaere. But assuming that it cannot, it does not follow that the payment of the compensation must be precedent to, or cotemporaneous with the taking. On the contrary, it is competent to the legislature to authorize the taking, leaving the assessment of the quantum, and the payment of the compensation, to be made subsequently.
2. The assessment of the damages to be paid to private individuals for property directed by the legislature to be taken for the use of the public, need not be made by a jury of twelve freeholders; it not being a controversy respecting property within the meaning of the 14th section of the Bill of Rights. Nor is it such a "trial by jury" as that section requires to remain "sacred and inviolable."
3. In taking private property for the use of the public, as for a public highway, the legislature is not restricted to a mere easement in the property, but may take the entire interest of the individual, if in the opinion of the legislature, the public exigency requires it.
4. A railroad company is a private corporation, its outlays and emoluments being private property, but the road constructed by them will be a public highway, and consequently they may, upon paying a fair compensation therefor, take private property, under the sanction of the legislature, for the use of the company, as being for a public use.

The plaintiffs were incorporated by an act of the general assembly passed at December, 1835 (2 Rev. stat., 299) "for the purpose of effecting a communication by a railroad from some point, in or near the city of Raleigh, to the termination of the Greenville and Roanoke railroad, at or near Gaston, on the Roanoke river." After providing

¹From 19 N. C., 451.

for the organization of the company, with the usual faculties of pleading and being impleaded, and purchasing and holding estates real and personal, as far as may be necessary for the purposes of the act, it proceeds in the seventh section "to invest the president and directors with all the rights and powers necessary for the construction, repair, and maintaining a railroad, to be located as aforesaid, and to make and construct all such works as may be necessary and expedient to the proper completion of the road." By the 12th section, the company have immediately "full power to enter upon all lands through which they may wish to construct the road, to lay out the same," not invading dwelling-houses, etc., and with other restrictions, particularly mentioned. And by the 17th and 21st sections, entry may be made upon the lands thus laid off for the purposes of constructing the road, and upon adjacent lands for the purposes of getting the necessary materials, with the provision in the 22d section for redress by action and double damages, for any wanton or wilful injury to the land, crops, or other property, by an entry for either of these purposes.

To provide for the condemnation of the land thus laid off for the road, or entered upon, after having been thus laid off, and also to provide for a compensation to the owner of the land, is the subject of nine sections of the act—beginning with the 12th and ending with the 20th section. The material provisions of those parts of the act are, that if the company and the owner of the land cannot agree as to the terms of purchase, the former is authorized, after notice to the owner, to apply to the Court of Pleas and Quarter Sessions, and the Court is thereupon required to "appoint five disinterested and impartial freeholders, to assess the damages to the owner from the condemnation of the land for the purpose aforesaid, any three of whom, after being sworn and viewing the premises and hearing such evidence as either party may offer, may ascertain those damages and certify the same" in a form given in the act: and in making the assessment, "they shall consider the proprietor of the land as the owner of the whole fee simple interest therein, and take into consideration the quality and quantity of the land condemned, the additional fencing that will be required thereby and all the inconveniences that will result to the proprietor from the condemnation thereof." The report of the freeholders, when thus made, is to be returned by them forthwith to the Court, and "unless some good cause be shown against the report, it shall be confirmed by the Court, and entered of record; whereupon, upon payment or tender of the damages," the land reviewed and assessed as aforesaid shall be vested in the Raleigh and Gaston Rail Road Company, and they shall be adjudged to hold the same in fee simple, in the same manner as if the proprietor had sold and conveyed it to them. "If the Company shall take possession of any land, and fail for forty days to institute proceedings for its condemnation as aforesaid, or shall not

prosecute them with diligence, the proprietor of the land may apply to the Court to appoint the freeholders with the same duties and powers in all respects as before, and the Court shall in like manner affirm or disaffirm the report"; and "when any such report, ascertaining the damages, shall be confirmed, the Court shall render judgment in favour of the proprietor for the damages so assessed and double costs, and when the damages and costs shall be satisfied, the title of the land for which such damages are assessed shall be vested in the company in the same manner as if the proprietor had sold and conveyed it to them.

By other parts of the act, the company is required, under pain of forfeiture, to begin the work within two, and finish it within ten years; and is vested with the exclusive right of transportation on the road, and required to transport all persons and property for certain tolls.

It is a misdemeanor, punishable by fine and imprisonment, to destroy or injure the road, or place any obstruction on it.

By section 25, all machines and vehicles and "all the works of the said company constructed, or property acquired under the authority of the act, and all profits which shall accrue from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and be exempt from any public charge or tax for fifteen years."

By the last section, "the corporate powers granted by the act are to endure for ninety years and no longer, unless renewed by competent authority."

The road, as laid out, passes over the land of Mr. Davis, situate in Warren county, and, at November Term, 1836, the company moved the Court of that county to appoint five freeholders to make the assessment, according to the act. Mr. Davis appeared and made known to the Court, that he and the company had been unable to agree touching the price to be paid to him for the land sought to be condemned, or touching the compensation for the inconveniences he must be subjected to by the proposed location of the road. And he refused his assent to the mode of proceeding for settling the controversy touching the said price and compensation then and there prosecuted by the company, but objected to the same—first, as a violation of the right of private property secured by the 12th section of the Bill of Right; and, secondly, as depriving him of the right to a trial by jury, which is made inviolable by the 14th section of the same instrument. The Court, nevertheless, appointed the freeholders, and made the order specifying their duties in the words of the statute. At the next term, three of them returned their report in the form prescribed in the 14th section, together with the certificate of the Justice of the Peace who administered the oath to them.

The company thereupon moved to confirm the report and have it entered of record; but the other party opposed the motion, and prayed

the Court to dismiss the proceedings. Upon consideration thereof, the County Court refused the motion of the company, and granted that of Mr. Davis; from which an appeal was prayed, which was also refused, upon the ground that no appeal is given in the charter.

The case was then brought into the Superior Court by a *certiorari*, and was there heard on the last Spring Circuit, before his Honor Judge Bailey, when the order of the County Court, dismissing the proceedings, was held to be erroneous, and reversed with costs, and a writ of *procedendo* ordered, commanding the County Court to proceed further in the case according to the said act of the general assembly and the law of the land. From that judgment Mr. Davis appealed to this Court.

The case was argued at the last term, by *Badger*, for the plaintiffs, and the *Attorney General* and *W. H. Haywood*, for the defendants. The Court continued the case under advisement until the present term, when their opinion was delivered by *Ruffin*, *Chief Justice*; who, having stated the case as above, proceeded as follows: As no objection was made in either of the Courts below, that the road was laid out so as to cover more land or in a different form than the charter authorized; or that the freeholders acted irregularly; or that the damages assessed are not a fair and adequate compensation for the fee simple of the land taken and all incidental damages, it must be assumed, that there is no ground for exception in either of those respects. The case is therefore to be decided on the specific constitutional objections made on the part of the defendant.

Upon those questions the Court had the benefit of a full argument at the last term. The impressions received were then so decided, as to have warranted the delivering of our judgment immediately, if it had been necessary; but as the prosecution of the work conducted by this company could not be impeded by the delay, and some of the points made are novel and of much magnitude, in reference to a class of subjects on which there has been recently and probably will be copious legislation, it seemed discreet, before announcing a decision, to give to the argument, and to the whole subject, the deliberation for which the vacation offered the opportunity.

The right of the public to private property, to the extent that the use of it is needful and advantageous to the public, must we think, be universally acknowledged. Writers upon the laws of nature and nations treat it as a right inherent in society. There may, indeed, be abuses of the power, either in taking property without a just equivalent, or in taking it for a purpose really not needful or beneficial to the community; but when the use is in truth a public one, when it is of a nature calculated to promote the general welfare, or is necessary to the common convenience, and the public is, in fact, to have the enjoyment of the property or of an easement in it, it cannot be denied, that the power to have things before appropriated to individuals again dedicated to the service of the state, is a power useful and necessary to every body

politic. Theoretical writers have derived it from the original and full property, in its highest sense, existing in the community or sovereignty of the state before any division among individuals, and they deem the right of resumption for common use to be tacitly reserved by implied agreement. Thus derived, the power has the sanction of compact, which probably furnishes the motive for tracing it to this source as constituting a sanction founded in morals and nature. But practically, it is immaterial whether the right be supposed to have been impliedly reserved because it ought not to be granted, or because it is a portion of the national sovereignty which is inalienable by the government, or whether the right is created by the public necessity, which at the time calls for its exercise,—its existence in every state is indispensable and incontestible.

A familiar instance of the exercise of the power is the levying of revenue, by taking from the citizen, from time to time, such portions of his property as may be requisite to conduct the government, instituted by the nation. Another instance essentially of the same character, is that of devoting private property to public use as a highway. A nation could not exist without these powers, and they involve also the welfare of each citizen individually. An associated people cannot be conceived, without avenues of intercommunication, and therefore the public must have the right to make them without or against, the consent of individuals.

This, too, is not only the right of the nation, constituted by the aggregate body of the people, but it is a right and power of government. It was said at the bar that it was a sovereign right, and therefore remains with the people of this state, since it is not granted in the Constitution. The position, if true, would destroy the value of the power here and dissolve the government. But it seems to the Court, wholly untenable. It is true the *eminent domain* is a political and sovereign power; so is every other power vested in, or exercised by any government. Before a people institute a government, they are themselves necessarily the possessors of all political power which men by the natural and divine law, can rightfully exercise over each other. But by the constitution of government, the political powers requisite to the existence of government and to the discharge of those functions for which the community created it, are transferred by the people to the government. From the people, the government derives the power to act on and control the people themselves, unless in those points, in which the government is restricted by limitations of power. With that exception, the powers of the nation become those of the government, save only, that over the constitution of government itself, to abolish or alter it. The government of the United States is an exception to the general principle, from its peculiar construction. To its formation the people of the several states were parties, and they, as the people of several states, have especially delegated to it particular powers for the purpose of making themselves one people,

under one government, for particular purposes only. But these incidental powers, derived by a fair, proximate, and natural implication from those enumerated, or from the purposes of forming the constitution, as declared on its face, have been exercised, and must be yielded. The government of North Carolina, however, is not one of specially delegated powers: it is only one of limited and restricted power.

The Constitution begins by simply "establishing a *government* for this state," and vests "the legislative power in a Senate and House of Commons." There are no grants of power to the legislature except in a few instances, where the power would not seem naturally to arrange itself under the general class of legislative powers, according to precedent usage, as the election of the governor and other high officers. It does not even confer the revenue power, nor that of granting the vacant lands; yet the legislature has always exercised both powers, by levying taxes, and by authorizing dispositions of the public domain, although "the right to the unappropriated soil is declared to be, in a free government, one of the essential rights of the collective body of the people," which means nothing more than that it shall not be seized on by any individual or particular class, but shall be kept or disposed of, for the common benefit of the whole people. This power, or right of *eminent domain*, is likewise possessed by the government, and may be exercised by the legislature or under its authority. Unless vested there, it cannot be called into action, and without it neither the government nor the state could hold together. It is peculiarly fit to be wielded by the legislature—it is a power founded on necessity. But it is a necessity that varies in urgency with a population and production increasing or diminishing, and demanding channels of communication, more or less numerous and improved, and therefore to be exercised according to circumstances, from time to time. The legislature of North Carolina, when it was a province, and since it became a state, have always exercised it, either directly or through the intervention of the Courts that administer the domestic police of the several counties. It is a power which the government is bound to the people to exercise, limited only by a sound discretion as to the number and nature of the roads, and restricted as to the mode of exercising it by the provisions in the Constitution, if any such there be. It is contended that there are such provisions, and that the act before us is in violation of them in several respects.

It is said—first, that the right of property involves the right to precedent compensation for it, when taken for public use. It is thence deduced as a corollary, that the questions whether the property shall be taken, and what compensation shall be paid for it, do constitute a question at law respecting property, and must be tried by a jury, according to Sec. 14, of the Bill of Rights.

If the government can lawfully take private property for public use, without compensation, then, confessedly, there is no controversy to be tried by a jury. But the government may prescribe such terms as may

be deemed befitting its own character and the justice of the state. So, though there be a constitutional obligation on the government to make compensation, yet if the compensation need not precede the taking of the property, the condemnation of the defendant's land is not illegal, because he may refer to the constitutional mode of ascertaining and enforcing payment of its value and other damages. It behooves the counsel for the defendants therefore to establish both parts of the proposition.

The right to compensation, as an absolute and legal right, was contested by the counsel for the plaintiffs, and strenuously asserted on the other side. The Courts do not decide it, but in this case will assume it to exist as contended on the part of the defendant, though not on all the grounds on which his counsel placed it. The Court cannot adopt some of the several distinct sources from which it was derived.

One of them was the fifth amendment of the Constitution of the United States, providing that "no person shall be deprived of his life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." That has always been understood to be a limitation of the power of the Federal government, and not of that of the states. It was authoritatively so held by the Supreme Court of the United States, in *Barron v. Baltimore*, 7 Pet., 243; which dispenses with further observations from this Court.

The natural right and justice of compensation, and the nature of our free institutions, were also relied on as sufficient in themselves to create the supposed restriction on this power. But the sense of right and wrong varies so much in different individuals, and the principles of what is called natural justice are so uncertain, that they cannot be referred to as a sure standard of constitutional power. It is to the Constitution itself we must look, then, and not merely to its supposed general complexion. There must be words in it, which, upon a fair interpretation, and in reference to the subject-matter, and to direct consequences, are incompatible with the enactments of the legislature, before a Court can pronounce such enactments null. The principle is, however, so salutary to the citizen, and concerns so nearly the character of the state, that it may well be urged that it must be consecrated by its adoption in some part of the free Constitution of this state. We should be reluctant to pronounce judicially, our inability to find it in that instrument. If it be not incorporated therein, the omission must be attributed to the belief of the founders of the government, that the legislature would never perpetrate so flagrant an act of gross oppression, or that it would not be tolerated by the people, but be redressed by the next representative chosen. There is no doubt that while the legislature and people of this state expressly restrict the action of the general government on this subject, it must have been supposed by the people that their own local government was in like manner restrained, or

would never act in a manner to make such a restraint necessary. There is, however, no clause in that instrument which seems to bear on the point, unless it be that which is relied on in the argument for the defendant. It is the 12th Sec. of the Bill of Rights which declares, "that no freeman shall be disseized of his freehold, or deprived of his life, liberty or property, but by the law of the land." Under the guaranty of this article, it has been held, and in our opinion properly held, that private proerty is protected from the arbitrary power of transferring it from one person to another. We doubt not that it is also protected from the power of despotic resumption, upon a legislative declaration of forfeiture, or merely to deprive the owner of it, or to enrich the treasury, unless as a pecuniary contribution by way of tax. Such acts have no foundation in any of the reasons on which depends the power in virtue of the right of eminent domain, to take private property for the public use, and they could not be sustained by the offer of the fullest compensation. Though not so obvious, it may also be true that the clause under consideration is restrictive of the right of the public of the use of private property, and impliedly forbids it, without compensation. But it is a point on which the Court is not disposed, nor at liberty, to give a positive opinion on this occasion. It is not required as a preventive warning against unjust legislation. For it is more inadmissible to suppose that the legislative acts will be designed to work oppression and wrong, than to violate the constitution directly. It is not deemed probable, and with difficulty conceived to be possible, that the legislature will at any time take the property of the citizen for public use, without at the same time providing some reasonable method of ascertaining a just compensation, and some certain means of paying it. Moreover, it is not open to the Court to give the definitive opinion demanded, because it does not in our judgment necessarily arise here, and it is indecent to decide so grave a question extra-judicially. Here the statute does give compensation fair and liberal, embracing not only the direct, but all incidental and consequential damages. For the purpose of this cause, therefore, it may be taken for granted, that compensation is in all cases requisite, as no doubt it will in all cases be made. But with this admission, the Court is of opinion that the proposition of the defendant's counsel, as to the mode of ascertaining it, and the period of payment, is not sound.

Unless the compensation must precede the seizure of the property, it is true that in many cases, one of the principal securities for it is impaired, and by possibility may be lost; that of the judicial enforcement of the right. When the property is taken for the public directly, and the payment is to be made out of the treasury, the compensation cannot be made the subject of litigation against the state, but the party must rely on the integrity of the legislature and the general will, to have equal right done to all. Yet it seems impossible to lay it down as a principle, that compensation is indispensably a condition precedent;

and this must be added to the examples already known, in which an injunction of the Constitution cannot be made the subject of judicial cognizance, but finds its only sanction in the understanding and conscience of the legislator. The exigencies of the public may be too urgent to admit of the delay requisite to the simplest mode of previous investigation. In time of war, for example, an army must have food, or ammunition or quarters, a field for encampment, or an entrenchment for defence, and the necessity is pressing and immediate. Other instances suggest themselves, in which a previous assessment cannot be had with any reasonable hope of doing justice. The act before us supplies one such in Sec. 21. It authorizes an entry into lands adjacent to the road, to cut, quarry, dig, and carry away wood, stone, gravel, or earth for the construction or repair of the road. And for those materials, and for all incidental damages done in taking or carrying them away, reasonable compensation is to be assessed by three freeholders, upon view and on oath. In the like manner, our public road law directs the overseer to cut timber and dig earth for bridges and causeways, and gives the owner a petition to the County Court for adequate compensation, to be fixed by the justices out of the county funds. Antecedent assessments, in such cases, must be made entirely at a venture, for it is uncertain what quantity of materials will be requisite or can be procured at a particular place, or how many tracts may be broken on the owner's land, and even the weather and season of the year may materially vary the damage. Therefore, the acts must almost necessarily provide for payment of injuries done, which can be seen, known, and truly estimated. The compensation, to be adequate, must be subsequent.

It may be observed that in this, we only adopt the established course of legislation and adjudication in that country from which we derive Magna Charta and most of the other free principles declared in our Bill of Rights. In case of *Boyfield v. Porter*, 13 East., 200, is a decision upon a similar act of parliament which confines the owner of the land to the remedy given by the act. The case is cited with an acknowledgement, that it is not an authority upon the question of legislative power in America; for that in England is unquestionably transcendent, and ours is as certainly limited. But when it is recollected, with what reverence the great charter has ever been held by both branches of that legislature, and especially by that which is popular; and when, moreover, it is called to mind, that the rights of private property have never been more respected than in that country, where it is carried to the extent, perhaps, injurious, of successfully opposing great political reforms, and generally prevents the abolition of even a public office without compensation to the incumbent, it may reasonably be inferred, that neither the parliament, nor the courts, nor the people of that country, perceived an infraction of the Magna Charta in those statutes. As practical evidence of the true sense of that clause of it, which has been transferred into our Bill of Rights, those legislative and judicial proceed-

ings, though not authority, are entitled to much respect. In a still greater degree, does the legislation of our own country, commencing at an early period of our provincial state, and continued up to the present time, upon the subject of laying our roads and making compensation, claim our attention as an authoritative exposition of the general sense through a long course of time, of the relative rights of the public and of individuals. It establishes or recognizes, on the one hand, the obligations of the public to pay a fair remuneration for injuries to individuals for the public service; but, on the other, it evinces the settled usage, and thence the legality of providing that the compensation may be antecedent, or subsequent to the injury, as the necessities of the public for the property may be immediate or otherwise, and according to the convenience of both parties for truly estimating the amount. In the Constitution of New York, is contained an express clause for compensation for private property taken for public use; and it is there settled also, that neither the payment nor the assessment need precede the opening of a road over the land of an individual. *Core v. Thompson*, 6 Wendell, 634. Indeed, the principle applies alike to every entry on the land, and would exclude one even for examination and survey, if correct. The Court concludes, therefore, that it is competent to the legislature to take private property for the public use, without a previous or contemporaneous payment of its value.

If the foregoing reasoning be just to establish the result declared, it seems to go far also to show that it is in the discretion of the legislature to appoint the tribunal by which the compensation shall be assessed. If the obligation on the legislature to make compensation be perfect and constitutional, it may be competent to the judiciary to declare that the title of the individual was never divested, if the legislature were to refuse, or for a long time delay, to make any compensation. Yet, if that which appears to be just, or does not appear to be insufficient, be provided and offered by the legislature, however it may have been fixed on, there is no ground for the interposition of the Courts. It is said, if this be true, the party to the controversy nominates the judges to decide, and might, indeed, make the decision directly without a reference to any other person. Perhaps the act might be found so nearly allied to the judicial functions as to be forbidden to the legislature. If it be not, the Court is not aware of anything to prevent a legislative assessment, except propriety, and the unfitness of large bodies for the impartial and minute investigations necessary to the justice of such cases. It is not likely that the attempt will ever be made, even in point of form, unless to carry into effect a previous agreement of parties. At all events, it was not done in this instance, but the decision was referred to persons judicially selected, impartial, and acting under oath, with opportunities for full information from evidence and from view. To such a tribunal no objection seems to be furnished by the principles of justice, or by the provisions of the Constitution.

It was, however, contended at the bar, that it is an evasion of the spirit, if not a violation of the express words of the fourteenth section of the Bill of Rights, by which, "in all controversies at law respecting property, the ancient mode of trial by jury is to remain sacred and inviolate."

This is a controversy *at law*. Is it also one *respecting* property? In what sense is it so? The necessity for the road between different points is a political question, and not a legal controversy; and it belongs to the legislature. So, also, does the particular line or route of the road, whether it shall or shall not be laid out so as to pass over the lands of particular persons; and that has also been decided by the legislature or referred to scientific engineers. The only subject for the consideration of the jury is, therefore, the quantum of compensation. Reduced to that point, the case of *Smith v. Campbell*, 10 N. C., 590, is a decision that it is not a controversy "respecting property," within the sense of the Bill of Rights. But the remaining words of the clause yet more clearly exclude this case from its operation. "The ancient mode of trial by jury," is the consecrated institution. This expression has a technical, peculiar, and well understood sense. It does not import that every legal controversy is to be submitted to and *determined* by a jury, but that *the* trial by jury shall remain as it anciently was. Causes may yet be determined on demurrer, and that being an issue of law is determined by the Court. Final judgment may also be taken on default, when the whole demand in certainty is thereby admitted; as is provided for actions of debt by the act of 1777, which was passed by nearly the same persons who composed the Congress of 1776. Interest at a certain rate, fixed by law upon notes as well as bonds, and in actions of assumpsit, is computed by the clerk; and costs, in all cases, taxed by him. These are all controversies respecting property in the same sense with the present, but they are none of them trials or cases for trials by jury. There is no *trial* of a cause, standing on demurrer or default. *Trial* refers to a dispute, and *issue* of fact, and not to an issue of law, or inquisition of damages. The terms of this section are with respect to the controversies mentioned in it, analogous to those in the ninth section with respect to criminal prosecutions. That provides that "no freemen shall be convicted of any crime, but by the unanimous verdict of a jury." Judgments may be undoubtedly given in indictments on demurrer, on the prisoner's standing mute and refusing to plead, upon submission and upon *cognovit*—when therefore a conviction by verdict is spoken of, it has in view only the case of a plea by the accused and issue on it. That raises a question which can be *tried* only by jury, and determined against the accused only by the unanimous consent of the jury. "Trial by jury" in civil cases, is equivalent to "conviction by verdict" in criminal proceedings. They do not include by force of those terms, any case in which there is not an issue of fact. It is the course, both in England and this country, to resort to this favorite Anglo-Saxon mode of de-

termining all legal controversies, as well as trying issues, civil and criminal, where it can be used without great inconvenience. It might have been adopted in this instance, and probably would have been prescribed in the act, but for the delay, expense and difficulty of proceeding by writ of *ad quo damnum* on so long a road, passing over the lands of so many proprietors. But it is not indispensable in such a case, because it is not embraced in the words used in the Bill of Rights. Many of the state legislatures, to whose codes we have had access, have proceeded in a similar way; and it has received judicial approbation. In New York, it was held by *Chancellor Walworth*, in *Beckman v. R. R.*, 3 Paige, 45, that the ascertaining the damages by commissioners, was not repugnant to that part of the Constitution of that state which preserves the trial by jury. In *Livingston v. New York*, 8 Wendell, 85, the same point was ruled unanimously, both in the Supreme Court and in the Court of Errors. In *Livingston v. Moore*, 7 Pet., 469, the distinction upon the words "trial by jury" is explicitly expressed by the Supreme Court of the United States. It arose upon these words in the Constitution of Pennsylvania, "Trial by jury shall remain as heretofore." The Court say, "the distinction between trial by jury, and inquest of office is so familiar to every mind, as to leave no sufficient ground for extending to the latter that inviolability which could have been intended only for the former." In the same light does the subject seem to have been viewed by our legislature in passing a variety of acts. Not to mention the numerous charters for roads and canals, with provisions similar to that now before us, the first mill act and those for partition and others, substitute commissioners for a jury to assess the value in the one case, and to make the division in the other, with power to charge one lot with money to be paid to the other.

The opinion of the Court is, that it was competent to the legislature to adopt the mode it did, for the assessment of the damages to the defendant.

It is further objected, that the charter takes more than the right of eminent domain authorizes. It is said, that the *public* is only entitled to the *use* of private property, leaving the property and right of soil in the proprietor; and that here the whole fee is taken and not for the public, but for the company, which is but a private corporation.

The doctrine of the common law is, that the public has only an easement in the land over which a road passes, and that the right of soil is undisturbed thereby. The reason is, that ordinarily the interest of the public requires no more. Every beneficial use is included in the easement, in respect at least to such highways as existed at the time the principle was adopted, and to which it had reference. But if the use requisite to the public, be such an one as requires the whole thing, the same principle which gives to the public the right to any use, gives the right to the entire use, upon paying adequate compensation for the whole. It is for the legislature to judge, in cases in which it *may* be

for the public interest to have the use of private property, whether in fact the public good requires the property, and to what extent. From the great cost of this road, from its nature and supposed utility, it seems to be contemplated to preserve it perpetually, or for a great and indefinite period. All persons are excluded from going on it, unless in the vehicles provided by the public or its agents; and to enforce that provision and adequately protect the erection from injuries, it may be requisite to divest the property out of individuals. But whatever may be the rights of the public in this respect, the question does not arise in the present stage of the controversy. The charter seems to be ambiguously expressed upon this part of the subject. It bears the marks of having been drawn for a perpetual charter, and to have lost that character by the addition of the last section, without corresponding alterations in those preceding. We suppose it clear, however, that it was intended to divest the right of soil at all events for the corporate term as now fixed, or as it may be extended. It seems equally clear, notwithstanding the words of perpetuity in the 16th and 25th sections, that no more is divested out of the defendant, than, upon the whole act, is vested in the corporation, or may be vested in it by a future act. As this may in that way continue forever, the legislature properly required the whole property to be paid for. But the rights of the defendant are not therefore necessarily extinguished. There may be a reversion in him, that will come into possession at the forfeiture or expiration of the charter. If so, at the proper periods, and when the question shall be presented in the proper form, it will doubtless be decided. At present, the only question is, whether the land shall be condemned for the purpose of the road, and on what terms; and the right of soil is not, in our opinion, involved. To condemn it, there must be a report confirmed and recorded; but the effect of that proceeding on the right of property, can only be determined, when a suit is brought, founded on the right of property. It would be improper that the present judges should volunteer their private opinions on it.

Upon the supposition that the legislature may take the property to the public use, it is next said, that this taking is not legitimate, because the property is bestowed on private persons. It is true that this is a private corporation; its outlays and emoluments being individual property; but it is constituted to effect a public benefit, by means of a road, and that is *publici juris*. In earlier times, there seems to have been a necessity upon governments, or at least it was a settled policy with them, to effect everything of this sort by the direct and sole agency of the government. The highways were made by the public, and the use was accordingly free to the public. The government assumed the exclusive direction as well as authority, as if they chose to be seen and felt in everything, and would avoid even a remote connection between private interests and public institutions. An immense and beneficial revolution has been brought about in modern times, by engaging individual

enterprise, industry, and economy, in the execution of public works of internal improvement. The general management has been left to individuals, whose private interests prompt them to conduct it beneficially to the public; but it is not entirely confided to them. From the nature of their undertaking and the character of the work, they are under sufficient responsibilities to insure the construction and preservation of the work, which is the great object of the government. The public interest and control are neither destroyed nor suspended. The control continues as far as it is consistent with the interests granted, and in all cases as far as may be necessary to the public use. The road is a highway, although the tolls may be private property, by force of the grant of the franchise to collect them. It is a common nuisance to allow it to become ruinous or to obstruct it. The government may, upon sufficient cause, claim a forfeiture of the charter, or compel the execution and repairs of the road by those undertaking them, by any means applicable to other persons charged with the like duties in respect to other highways. The difference is, that the corporation, in lieu of the sovereign, has the custody and property of the road, and the collection of the tolls, in reimbursement of the cost of construction and remuneration for labor and risk of capital. As to the corporation, it is a franchise, like a ferry or any other. As to the public, it is a highway, and in the strictest sense, *publici juris*. The land needed for its construction is taken by the public for the public use, and not merely for the private advantage of individuals. It is only vested in the company for the purposes of the act; that is, they make the road. This case is therefore essentially different from that of *Hoke v. Henderson*, 15 N. C., 1, which was so much insisted on at the bar. There, the office, a subject of property to a certain extent, was taken from one and vested in another, exactly in the same state and to the same public purposes as it was held by the first. The public interest was in the service of the officer, being precisely the same, with either person for the incumbent. It was therefore taken solely for the benefit of the new appointee, which could not be supported. But in this case, the land is taken from the defendant for a public purpose, to which it had not been applied while in his hands. It is taken to be immediately and directly applied to an established public use, under the control and direction of the public authorities, with only such incidental private interests as the legislature has thought proper to admit, as the means of effecting the work and insuring a long preservation of it for the public use.

It is the opinion of the Court, that no one of the objections is sufficient to arrest the proceeding for condemnation, and that the judgment of the Superior Court must be *affirmed*. This will be certified to that Court, that a writ of *procedendo* may issue thence to the County Court.

Per Curiam.

Judgment reversed.

OPINION IN WISWALL V. BRINSON¹*Howell Wiswall v. Hiron Brinson.*

Where A made a contract with B that the latter should, for a stipulated sum, remove a house belonging to the former from one side of the street to the other side, and B performed his work so negligently as to cause an injury to C: *Held* by *Pearson* and *Nash, J.* (*Chief Justice* dissenting), that A was liable to C for the damage he had sustained.

Appeal from the Superior Court of Law of Beaufort, at Spring Term, 1847, *Pearson, J.*, presiding.

This was an action of trespass on the case.

The defendant, wishing to have a house moved from the lot on which it stood in the town of New Bern, to a lot of his own across the street, about two hundred yards distant, agreed to give one Gaskill \$81 to move it, Gaskill to be at the expense of providing hands, etc. After the house was rolled into the street, Gaskill dug a hole in the ground, about the middle of the street, eighteen inches deep, to fix an anchor for the purpose of turning the house, and neglected to fill it up. The night after, as the plaintiff was driving his stage, one of the horses stepped into the hole and was injured. The defendant had nothing to do with the operation of moving the house, and did not at all interfere. He resided in town and was present several times, but was a mere "looker-on." It was admitted that Gaskill was guilty of negligence, and the only question was whether the action could be maintained against the defendant.

Under the instructions of the Court the jury found a verdict for the plaintiff, and from the judgment thereon the defendant appealed.

[Here follows the decision of the court delivered by *Pearson, J.*]

* * * * *

Ruffin, C. J., dissentiente. I find it established as a rule of law that the possessor of real property is liable for any injury received by reason of a nuisance on or at his premises, whether the nuisance be caused by himself, or his servants, or by persons contracting to do work for him on the premises. The propriety of the rule is easily understood, in respect of the owner and his own servants, in the ordinary sense of the term. In respect to contractors to make improvements, it is not so obvious. I must say, with *Chief Justice Eyre*, that I should have had great difficulty in discovering the principle which creates a liability of the owner of property for the negligence of persons who contract with him to do work on it by the job and not under his particular direction. But the principle is settled, and in the case of *Burk v. Stinman*, 1 Bos. and Pul., 405, it was put on the ground that the owner of real property is bound not to suffer even contractors to do anything on his premises, for his benefit, which may work a prejudice to other persons. Hence it was held that, as laying materials in the street, which were to be used

¹From 32 N. C., 554.

in building a house on the adjacent land of the defendant, would be a nuisance if done by the defendant or by his family, which would render the owner responsible for any injury occasioned by it, so it would, also, if done by one who contracted for a certain sum to build the house out and out. *Mr. Justice Rooke* said that one who has work going on upon his own premises must be civilly liable for the acts of those whom he employs there; and it will be intended that he has a control over the persons who work on his premises, and, if he deprive himself of it, he cannot be permitted to screen himself thereby from an action. It will be at once perceived that the liability, thus stated, does not arise from considering the contractor as the servant of the owner; for if that had been the ground, it would have depended on the common maxim of *respondet superior*. But the Chief Justice said expressly, that the relation of master and servant, as commonly exemplified, was not sufficient; and then he adds that a general proposition that a person shall be answerable for any injury which arises in carrying into execution that which he has employed another to do, seems to be too large and loose. *Mr. Justice Heath*, likewise, particularly repudiates the idea that the liability of the landholder grew out of a relation of master and servant between himself and his builder. Hence, the whole Court places his responsibility on the single ground that every owner of real estate is bound to prevent nuisances on his premises which are created in the course of doing work there for him by anybody or on any terms; for he has no more right to allow others to erect nuisances on his premises than to do so himself. That is the doctrine of that case, which is the leading one on this subject. But it has been distinctly stated, and adopted by almost every eminent modern judge in England. In *Laugher v. Pointer*, 5 Barn. and Cres., 547, *Mr. Justice Littledale* treats the liability of one for the acts of another, whom he hires to do a job, as peculiar to such work as is done on real property. As to such property, he admits that one in possession must have the property so managed as not to injure others, whether it be managed by his own immediate servants or by contractors or their servants; and he assigns the same reason, that the wrong is in the nature of a nuisance, for which the occupier ought to be liable when occasioned by the acts of persons whom he brings on the premises; he, too, excluding the idea that the contractor, as such, is the servant of the proprietor of the house under repair or being built. And that learned judge contradistinguishes the doctrine as to the personalty from that stated in respect to the realty in a most striking manner. He says movable property is sent out into the world by the owner, to be conducted by other persons. The common intercourse of mankind does not make a man or his own servants always accompany his property of that kind, and he must in many cases confide the care of it to others who are not his servants, but whose employment it is to take care of it—as carriers, factors, and the like. *Chief Justice Abbott* said, also, that the owner of a mine or a house was

liable for what was done by persons immediately or mediately employed by him in working on them, because the owner has the control and management of all that belongs to the mine or house, and therefore it was his fault not to exert his authority so as to prevent a nuisance to the injury of another. *Baron Parke* quoted those positions, almost literally, in delivering the opinion of the Court of Exchequer in *Quarman v. Burnett*, 6 M. and W., 499; and again in *Respon v. Cebitt*, 9 M. and W., 710, he states the doctrine thus: "that if a man has anything done on his own premises, he must take care to injure no man in the mode of conducting the work." There are other cases to the same effect, but more need not be quoted on this point. Those cited sufficiently show the proposition before stated, that the owner of real estate is liable for all the nuisances erected on it, not only by one who stands toward him in the relation of a servant, but also by one in the relation of a contractor to do a job on the land.

But I deduce clearly from those cases, and venture to lay it down as a necessary part of this doctrine, that if one contract with another to build him a house on his land, whatever is done in collecting materials, or hewing stone, or framing timber, or making any other preparations for the building by the contractor, at a distance from the place where the house is to be erected and not at all on the premises of him for whom the work is to be done, the latter cannot be held liable for a nuisance caused by his builder at the distant point at which he carried on his preparations. Before the things are carried to their destined spot—that is, while they are not "on the premises"—the proprietor of the land cannot be liable, within the principle of those decisions. It is only *on his premises* that the owner has "that control and management," by reason of which the law deems it *his* fault to allow of an injury to any one *there*. Take the case of *Burke v. Stinman* to exemplify the distinction. A quantity of material was to be brought by persons employed under a man with whom the defendant bargained for the building, out and out, of a house by the roadside, and it was laid in the road near the place, and a carriage was upset by it and the persons hurt; and the owner of the land was held liable upon the ground before stated, namely, that the damage arose from a nuisance created at his premises for his benefit. But suppose that, instead of the materials being carried to the premises and laid there, the carters, in bringing them towards the place, had, a mile off, negligently driven against a passenger, or willfully thrown down their loads in the road and a coach had run over the heap: it may, as it seems to me, be deemed certain that neither of the judges whose opinions have been quoted would have subjected the owner of the land on which the house was to be built. I cannot perceive the slightest pretense on earth for his liability. One can be at one's own house or place, so as to prevent or abate any nuisance there; and therefore the law may enjoin it on one to do so, upon the maxim, *sic utere tuo, ut alienum non laedas*. But by no possibility can one be at all those places where

all the persons whom one may be under the necessity of employing about personal matters may happen from time to time to be, so as to correct their misdoings. Indeed, the employer would have no authority over them; and the law cannot intend that he must go away from his own premises to look after people who contracted to bring him the materials he wanted. Until they be placed on his premises, or at the place whence they are to be taken for application directly to the building, they are not the materials of the landowner nor to any purpose *sub potestate ejus*. If *Burke v. Stinman* had been that case, we may be at no loss to say that the judgment would have been for the defendant. Now, the present case seems to be just the one supposed. The defendant had a building two hundred yards off, and contracted with another man for a round sum to remove it to the defendant's lot—the contractor to be at all the expense, and to have the exclusive management of the job; and the contractor, having moved the house from the land on which it formerly stood (which did not belong to the defendant), and got the house into the street, committed a nuisance by digging a hole in the street, at a distance of nearly two hundred yards from the defendant's ground. That is the case, and the question is whether the employer is liable for *that* nuisance. I may be mistaken, but I entertain a very decided opinion that he ought not to be. It is plain that it is not within the class of cases of which I have been speaking; for the wrong was not done on the defendant's premises, nor near them, nor in respect of them, but was done at a considerable distance, and about a purely personal chattel. Therefore *Burk v. Stinman*, and all its derivatives, are inapplicable here; or, rather, upon their reasoning, they show negatively, but conclusively, that the defendant is not liable. But, furthermore, if the defendant was present when the hole was dug in the street—as it seems he probably was—it can make no difference; for he had no authority over the contractor, nor power to give a single order. In other words, the contractor was acting independently for himself, under an agreement to do the work, and not as the servant of the defendant.

That brings me to another ground, on which it is supposed a liability of the defendant may be raised, which is, that the relation between those parties is that of master and servant. In the arguments at the bar the counsel confined their observations entirely to the point I have been considering, and did not suggest the other, of master and servant. Therefore I did not turn my attention to it until recently. But I confess my researches and reflections lead me to a very clear opinion on it also, in favor of the defendant. I admit, of course, the liability of a master for the injuries done by his servant in the course of his employment. But two persons must first be master and servant before there can be a responsibility on one for the acts or omission of the other. The question is, what makes them so—what constitutes that relation? I own, it is new to me that, in a legal sense, so as to create responsibilities of the one for the other, the procuring of work to be done for one by another

creates that relation, so that if, by the negligence or want of skill of the latter in doing the work, a third person is injured, then the person at whose instance the work is done shall answer for the injury. My notion has been that the point depended upon the manner in which the workman was employed—whether as the servant of the employer or under an independent contract, by which the parties remain *in equali jure*. In other words, that the rule that a man shall be liable for his own servant, applies only to a servant; and, therefore, the first thing, always, is to show that the relation subsists. Now, what are the characteristics of that relation—how do we know when two men are master and servant? I admit that the mode of compensation, merely, does not determine the question conclusively; for a servant may be paid by the year, month, day, or job; though the mode may help, with other things, to show how the parties themselves regard each other. But there is a certain method of distinguishing a servant, of any kind, from persons *sui juris*—which is by knowing whether the person employed is subject to the orders and control of the employer in the execution of the work he is to do, or not. If the employer has a right to have the work done as he pleases, can change the plans and periods of it from time to time, to suit his fancy or his other business—in fine, if the hired man works *under* the other—then one is master and the other is servant; but, otherwise, not. Hence, officers of companies, hands on cars or ships, deputies as well as menials and domestics, are properly and truly servants. They are under the direction of the superior, and therefore the superior answers for them. But those officers and hands, or any other carrier, whether a head or subordinate, are not the servants of one whom or whose goods they carry. Why? Because they do their work, not under the control of the passenger or freighter, but they are guided by some other superior or go their own way. So it is as between all other persons who employ and are employed. In the cases hitherto cited that view is taken of this point. In *Burk v. Stinman, Heath, J.*, admitted distinctly that the persons who hauled the lime were not the defendant's servants, although doing work for him on his premises; but he said the action did not depend on that relation, and the defendant was liable, though the others were not his servants. Why was he not their master? Obviously because they did not work under him. They were the servants of a contractor who had undertaken to build the house. He was, therefore, not the servant of the defendant, and, of course, his servants were not; but they were the servants of their own master. It will be remembered that in the passage already quoted, *Chief Justice Eyre* expressly disclaimed the relation of master and servant, in its ordinary acceptation, subsisting between any of those parties; and that he most emphatically repudiated the notion that the defendant was to be brought in under the "large and loose proposition" that a man was to be answerable for every injury arising in carrying into execution that which he has employed another to do. The observation naturally suggests itself here, that it is

quite surprising the Court, in all those cases, should have been put to such difficulty to find the ground on which the landowner was to be held liable for injuries sustained during the progress of the work on his premises from the acts of the contractor and job men, if they, the contractor and job men, were servants by force merely of their being job men and contractor, as is urged against the present defendant. Would those learned judges have been apt to overlook so good a ground, and so plain before them? But they did more. They did not merely overlook it, but they went farther, and condemned and rejected it. But there is another case still stronger. In 1842 the case of *Respon v. Cebitt* 9 M. and W., 710, was before the Court of Exchequer, in which the facts were that a builder was employed to make alterations in a house, including gas-fixings, and he made a contract with a gas-fitter to do that part of the work; and in the course of its execution the gas exploded, through the gas-fitter's negligence, and hurt the plaintiff, who sued the head contractor. But it was held the action would not lie. Now, there is no doubt that the gas-fitter and the owner of the premises were, each, liable; the former, for his own default, and the latter as owner of the premises where the injury was sustained, but not as master of the gas-fitter; for he was servant to no one, not even the builder who employed him. Why was he not servant to the builder, and the latter, accordingly, liable for his negligence? The judges state the reason distinctly, and truly, as far as I am capable of understanding it. Lord Abinger says Cebitt was not liable, because Bland, the gas-fitter, "did not stand in the relation of servant to him, but was merely a subcontractor," which plainly means that the one was not servant to the other, because he was a subcontractor. Baron Parke says Bland was a subcontractor to do certain of the work, and therefore the relation of master and servant did not subsist between him and the defendant. Those positions are so explicit and so tersely expressed as not to be susceptible of misapprehension; and one would suppose that no one, with them in his mind, could be at a loss to determine the relation between the parties here, in whose acts and dealings there is nothing equivocal, that can confound. It is a distinct job undertaken by the contractor for his own profit, and upon the strength of his own skill and ability, and at his own risk, without obliging or allowing the defendant to interfere in the least with the operation. It is, therefore, absolutely certain that the defendant had no more authority, morally or legally, over the house-mover than the latter had over him. They stood exactly upon a par to every intent, as contracting parties, and were not master and servant, unless in the sense that one is the servant of everybody for whom he does any work. There are, indeed, in the books some cases which turn upon very nice points, as to the facts from which it was inferred that the employer had or had not the control of a person actually working for him, so as to render the employed the other's servant. *Laugher v. Pointer* was one of them. A gentleman hired of a stable-keeper a pair of horses to draw his carriage for a day,

and with the horses the other sent his own driver, through whose negligence in driving the plaintiff was injured, and an action was brought against the owner of the carriage. Upon the question whether he was liable, the Court of King's Bench was equally divided—as, indeed, were nearly all the judges of England at one time. I confess I should be at much loss at this day to say on which side the better argument was. A gentleman cannot judge of strange horses, and the stableman might not be willing to trust his horses in any hands but those of his own driver, whom he knew and who knew the horses; and therefore it would seem to be a case of separate undertaking by the stableman, and, consequently, not subject to the control of the owner of the carriage. On the other hand, it is difficult to suppose that a gentleman can intend thus to put himself upon the will and pleasure of a postillion, and there is a presumption that he really exercises an authority as to the places and manner of driving. But, however doubtful may be the application of the rule to such a case, in order to know whether those parties stood in the relation of master and servant, the rule itself stands out boldly and truly in all that the judges say. Hence, *Mr. Justice Littledale* says that the job man was not a servant, because he was carrying on a distinct employment of his own, in which he let his man and horses both to the defendant; that the owner of the carriage, therefore, did not employ the driver and had no power to dismiss him or take the management of the horses from him. It is plain that by the terms, “distinct employment,” the judge did not rely upon the stable-keeper's having a known calling, as a separate possession, as making a difference, except so far as it afforded evidence of the nature of his engagement with the defendant, namely, that he was dealing by way of independent contract, and not as putting himself a servant to every one to whom he let horses. There can be nothing in the calling of the two contracting parties being the same or different; and if the owner of the carriage had been, himself, a livery-stableman, and yet chose to hire horses from another, their relation would be like that which, under similar circumstances, would subsist between men of other avocations. If that, however, were material, this case, as it appears to me, would clearly fall within such a distinction; for I protest that I should be as little competent to move a house as to build one; and I believe that in large towns removing houses is one of the regular pursuits of life, requiring much skill and experience and strong and expensive apparatus to do it expeditiously, cheaply, and safely. I do not deem that of any importance, however, since I consider the reasons of both the *Chief Justice* and *Mr. Justice Littledale* in *Laugher v. Pointer* to proceed distinctly upon the principle that the defendant had bargained with a job man for the service by an independent agreement, and therefore the job man's servant was not the defendant's servant—it being enough for one man to be the servant of one master. But the exemption of the defendant did not depend on that quaintness, that the driver was the livery-stable-keeper's servant, and therefore could not be

the defendant's. On the contrary, the driver was not the gentleman's servant, because his master was not such servant; for if the stable-keeper himself, had been driving, the defendant would have been as little liable as *his master*, as is clearly laid down in the subsequent case of *Quarman v. Burnett* as the unanimous opinion of the Court of the Exchequer after a vacation for the full consideration, which *Lord Denman* said it received. There it is admitted that the hirer of job horses and a driver may make himself responsible for the driver, by taking the management and order the driver to go in a particular manner. Yet it was distinctly stated that he would not thus become liable by virtue of the relation of master and servant. The Court say, first, that the coachman who did the injury is liable; and, so far from holding that the stable-keeper would not be liable if he had driven himself, or that the defendant in that case would have been, they say, secondly, that the stable-keeper was liable, as he undoubtedly stood in the relation of master to the wrongdoer, having selected him, and having power to control and remove him; and they say, thirdly, that the owner of the carriage was not liable, because he was *not* the master of the wrongdoer, nor of the wrongdoer's master. Why was he not? Because, say the Court, further, he was "a third person entering into a contract with the master" (the job man) "which did not raise the relation of master and servant at all. To make such a person liable, recourse must be had to a different and more extended principle, namely, that a person is not only liable for the acts of his own servants, but for an injury by the act of another person in carrying into execution that which that other person has contracted to do for his benefit—which is too large a position." We may here take notice that the Court lays stress upon the circumstance that the defendant was a hirer by the job, not merely to show that the driver did not become his servant, but also that, for the same reason, the driver's master did not become the defendant's servant; for the words are that *the contract did not raise the relation of the master and servant at all*. Of course, if the job man was liable for the neglect of his servant, he would have been for his own, had he gone, just as the coachman, whom he sent, was said to be, that is, as the wrongdoer. That case carried with it the whole Court of King's Bench in the same year, in *Milligan v. Wedge*, 12 Adol. and El., 737. The case was that there was a by-law in London that no one but a licensed driver should drive cattle from Smithfield through the city, and that a butcher bought a bullock and hired a drover to drive it to his slaughter-pen without the city, and the drover put it in charge of his boy, and by negligent driving, after he had passed through the city, damage was done, and the butcher was sued, and judgment given for him. That is another plain adjudication upon the same principle, namely, that when a man hires another upon an independent contract to do work upon his own responsibility, and not under the orders of the employer, they do not become master and servant. It is in that sense *Lord Denman* speaks of the drover, as exercising a distinct call-

ing—as tending to show that he was to do the work under the butcher. For, he says, the mischief was done in the course, not of the butcher's business, but the drover's—meaning their business by the contract according to its true construction, in reference to the skill of the several parties and the responsibility each was to have in performing the job. It could mean no more, for he could not have reference to the authority conferred on the drover by his license, as that did not extend beyond London, and they had got out of the city before the damage was done, and were then but common job men. Indeed, *Mr. Justice Coleridge* goes on the express ground that, whether the drover or his boy was driving the butcher could not be held liable, because he made a *contract* with the drover that he should drive the bullock, and *left it under his charge*; and the relation, *therefore*, of master and servant did not exist between them. One could hardly expect to find language more apposite to any case than that is to the present, in support of the positions I have thought it my duty to state.

There is still another case to be noticed, that of *Martin v. Temperly*, 4 Adolp. and El. N. S., 298. The defendant owned two barges which he worked on the Thames. By a statute, and a by-law of London, no one but freemen of the Watermen's Company, or their apprentices, were allowed to navigate craft on the river, and there were about six thousand of them. A freeman of the company was foreman to the defendant and let himself and an apprentice by the week to the defendant, who paid the wages weekly. The case also states that the foreman was paid by the defendant by the job for what the apprentice did. The foreman then hired a freeman of the company by the job and put his own apprentice aboard with him to navigate the barges on a particular day, and they did it so negligently as to injure a vessel belonging to the plaintiff, who sued the owner of the barges and recovered; and, as it seems to me, very properly. To say nothing of one of the hands on board being the apprentice of the defendant's undoubted servant and being put on board a standing contract with the defendant, the liability of the defendant arose from the fact that the boats were then in his service, actually employed in earning money for him. It was the regular course of employment of them and mode of engaging hands for them; and it was nothing, whether the defendant paid the hands so much a week or so much each job of such or such a kind. For there is no magic in the term job which will prevent a person from being liable for another whom he employs under him, and earning profits for him, being under his orders and rule. That is the very principle for which I contend; though I say that if a man is hired, not to earn profit for another or to work under his government, but to do a particular piece of work for him according to his own skill, such a man is not the servant of the other. Now, *Martin v. Temperly*, so far from militating against those positions,

goes explicitly to sustain them. Two objections were taken on the part of the defendant. One was that he was obliged by act of Parliament to employ the freemen, and, being imposed on him, he ought not to be responsible for them. The other was that they were employed for the job, and therefore were not servants. Both were readily answered. The reply to the first was that the act of Parliament, even, called the watermen the servants of their employers; and that, if they were not, there would really be nobody responsible for barges on the river, as there could be no other hands on board but freemen—which could not have been intended. Besides, the number was sufficiently great to allow a proper selection. With that, however, we have no concern now. Our business is with the other point. And upon that *Lord Denman* remarks that the distinction between *Milligan v. Wedge* (in which he presided) and that case was that in the former the owner of the bullock had *no longer any control over it*, but that in the latter *it was otherwise*. And *Mr. Justice Coleridge* stated the men were the defendant's servants, "because *they were under his control*; that is, in doing the work in the ordinary way." As to the difference said to arise where a workmen is paid so much for doing the whole job, he denied its application there, because "the defendant might either pay for a given time or work, *and the men here were as much under that of his master*." To that I can add nothing to make the case more applicable to the one in hand. It goes, with all the other cases, to establish that when a hireling is under the ordering of another, he is his servant; but when one person employs another at a fixed price to do a particular piece of work for him, not on his land, and over which the employer is to exercise no control, they stand in the relation of joint contractors, and not of master and servant. That appears in every case to be the test—whether the agreement is such that the one is to have the control over the other—the ordering and rule over him, or the contrary; and it is an infallible test. If I employ a man to carry me or my goods, I am not bound for his acts. If the article I engage him to carry be my carriage, and he puts it on railroad cars or into his wagon, in order to transport it, he is my bailee and not my servant, and I am not liable for him. So if, instead of doing that, he puts his horses to it and carries it on its own wheels, it can make no difference, and he is still but my bailee. And so it was when the defendant engaged the man to move his house, and he did it. How is it possible that man can be called the defendant's servant? He could not interfere in the work without breaking his contract. Indeed, he had no more authority in law over the house-mover than the plaintiff himself had. Suppose that a person had employed hands to help him and had contracted debts for machinery with which to perform the operation, would the defendant have been liable for them as debts contracted by his servants in the course of his employment? If a person employ another to build him a house out and out, is the employer liable to pay for all

the materials the other may buy for the work, because got by his servant for his use ultimately? Surely not, unless we are to resolve all engagements between man and man into such as create the relation of master and servant. It seems to me, in fine, that the defendant is clearly not liable. And I am not able to add anything which can make it plainer.

Per Curiam.

Judgment affirmed.

ADDRESS OF THOMAS RUFFIN¹

DELIVERED BEFORE THE STATE AGRICULTURAL SOCIETY OF NORTH CAROLINA, OCTOBER 18TH, 1855.

The duty has been assigned to me of making to this assemblage of our fellow-citizens the usual annual address on behalf of the Agricultural Society of North Carolina. I heartily wish for your sakes, as well as my own, that it had been allotted to some other person more competent to instruct or entertain. But though reluctantly, I have undertaken it, that I might, if no other good should be done, show my concern in the welfare of the agriculture of North Carolina and its kindred arts, and my zeal for their advancement and prosperity, under a confident assurance, indeed, of the kind consideration of North Carolinians for the imperfections of one who, though long unused to public speaking, is sincerely desirous, in any way he can, of magnifying to North Carolinians their chief calling and office, and endeavoring to make them satisfied with their situation here.

In the first place it is fit, that to all here thanks for their attendance and a hearty welcome should be tendered. The purposes of the Society and the modes of effecting them, are generally known; and we invite the

¹From the Standard, October 24, 1855—The address was introduced with the following notice:

THE LATE STATE FAIR

We devote the greater portion of our space today to the Address of Hon. Thomas Ruffin, and to the list of premiums awarded at the last State Fair.

The Address of Judge Ruffin will have a wide circulation in the public journals; and we trust our Northern contemporaries especially will lay that portion of it which treats of the institution of slavery, before their readers. No man in the country is better informed than Judge Ruffin is as to the character and workings of the institution; and no one has ever spoken of it with more calmness, discrimination, or truth than he has on this occasion. He has never been a politician. On the contrary, he has devoted himself for nearly half a century to the practice of the law, and to the exposition of the law on the Superior and Supreme Court benches of the State; and he is now in private life, a scientific farmer, the owner and controller of a large number of slaves—their master and best friend—fully informed, by experience and observation, of the nature of the institution, and competent in every sense to judge correctly as to the benefits it has conferred on both races. We trust, therefore, that this voice, uttered by such a man and under such circumstances, will be heard and heeded by our Northern brethren, and be productive of lasting good.

coöperation of all in the good work. Join in our association. Let every one add what he can to the general fund of agricultural knowledge. Enter into the competition for improving tillage, perfecting and increasing the productions of the grains, the grasses, the vegetables, and the fruits of this earth, our animals and our implements of husbandry, and other manufactures; and exhibit here at our Fairs such things as you have. Indeed, those who bring only themselves are very welcome; for, after all, our men and women are our best productions, and it can only raise a just pride to see them gathered together to extend acquaintance, form friendships, gain and impart knowledge, honor agriculture and thereby become the more content with our lot being cast in North Carolina.

Next, the Agricultural Society owes, and we ask the agricultural community to join in making, acknowledgements to the General Assembly for the pecuniary aid extended to the Society. Its usefulness depends chiefly on its ability to offer and pay premiums to exhibitors to such an amount as may stimulate competition and multiply exhibitions. A proper amount of premiums was larger than could be confidently counted on at all times from the fluctuating and uncertain contributions of annual subscribers and visitors at the Fairs; and since our last annual meeting, the Society presented to the Legislature a memorial praying such assistance from the Public Treasury as that body might deem requisite to the advancement of agriculture and manufactures among us. I am happy to announce here, that, in compliance with the memorial, a permanent annual appropriation of \$1500 was made for the payment of premiums, subject only to the reasonable and politic proviso, that within the preceding twelve months, the Society shall have raised the like sum for the same uses. The appropriation, if not fully adequate to the wants and claims of a people as agricultural as those of North Carolina, is yet of great benefit in many respects, and chiefly as permanently establishing the Society and Fairs, since it cannot be supposed that the farmers and mechanics and traders of the State have hearts so dead to their duty and interests as to let them fail for want of contributions on their part to an equal amount. The present is the first occasion, since the grant on which the Society has had the opportunity of acknowledging this legislative bounty, and we take much pride and pleasure in doing so.

Now, it may be asked: Is the agriculture of North Carolina worthy of this public patronage, and of the efforts of some of her citizens to promote and improve it? I answer, Yes—yes. North Carolina is entitled to all, that every one of her people can do to promote her prosperity and elevate her character; and her sons will be amply remunerated for their efforts for her advantage and their own. Our occupations are essentially agricultural, and embrace all its variety of pursuits—planting, farming, breeding livestock, and the culture of fruits. Until very recently they were almost exclusively agricultural;

as there were natural obstacles to foreign commerce, difficult to overcome, and but few manufacturing establishments among us. In both these respects progress has been made and is making; and there is good ground of hope, that before long fleets of our own merchantmen will sail from our shores, richly laden with our productions for sale or exchange in the ports of our sister States and foreign countries; while factories of various kinds, now established in different parts of the State, will be multiplied beyond any present calculation that can be made, not only for the fabrication of the most useful implements of wood, iron, and other metals, but for our supply of those fabrics out of the great Southern staple, cotton, which have become indispensable. Manufactures are already, without doubt, material helps to agriculture by diversifying employments, increasing the consumption at home of our crops and stocks, and supplying on the spot and without delay many articles needful to the planter and farmer. In time they will become a more distinct, productive, and influential item in our political economy; but never, I think, as the rival or foe of our agriculture, but as a faithful friend and servant. As yet, however, the cultivation of the earth is the great and productive business of North Carolina. It has made us hitherto a thriving and happy rural people. We are still so; and it will make us still more so, as it becomes improved and more productive. Why should not the agriculture of North Carolina be as improveable and improved, and her sons, engaged in it, as prosperous and happy as those of any other parts of our country? No reason of weight can be given in the negative, if we will but strive for improvement. Everything is in our favor, if we will make the effort and use the proper means; and of that every one may be satisfied if he will observe and reflect on what is around him.

The profits and the comforts of agriculture depend mainly on climate, soil, labor, and the facilities for disposing of surpluses of production. The two first, climate and soil, should be congenial to products requisite for the sustenance of the husbandman himself, and in demand for others who cannot produce for themselves. In both points North Carolina is highly blessed. In her position on the globe she occupies that temperate and happy mien, which is conducive to health and the vigorous exertion of the faculties and energies of body and mind, in employments tending more than all others to the hospitalities and charities of life, and the other virtues of the heart, and which constitutes a climate, that in unison with her fertile soil, yields abundantly to the diligent tiller nearly all the necessities and many of the luxuries required by man. We do not work barely to maintain life; but, beyond that, to realize gains that may be employed in the addition to other things productive of the elevation and refinement of civilized man. Our winters, by their duration and rigor, do not confine us long within doors, nor cause us to consume the productions of our labor during the other parts of the year; but we are able to prosecute our field operations and com-

fortably pursue our productive employments throughout the four seasons. Though not of such extent of latitude as thereby to create much variety of climate, and consequently of production; yet, the dimensions of North Carolina east and west supply that deficiency in a remarkable degree. The proximity to the ocean of her eastern coast, and the difference in elevation between that and the mountains of the west, with the graduations in the intermediate regions, produces a diversity of genial climate which gives to North Carolina, in herself, the advantages of many countries conjointly. By nature, too, her soil was as diversified and as excellent as her climate. The rich alluvial of the east, the extended and extremely fertile vallies of the many long streams—the Roanoke, the Tar, the Neuse, the Cape Fear, the Yadkin and Pedee, the Catawba, and other rivers, which appear upon our map, besides those of smaller streams, almost numberless, all, at a moderate expense of care and labor, return large yields of nearly every grain and other production fit for food. Rice, maize, wheat, rye, barley, oats, the pea, the potatoe of each kind, besides an endless variety of other sorts, vegetables, and fruits are found abundantly therein; while higher up the country, in addition, the grasses grow so readily and luxuriantly as to afford not little plots on the moist bottoms of brooks, but extensive pastures and magnificent meadows to the mountain tops. Then, there are the great articles of cotton and tobacco, so extensively used and in such great and increasing demand—to one or the other of which the greater part of the State is eminently suited.—Of fruits, melons, of every kind, and of the best qualities, apples, peaches, pears, cherries, nectarines and apricots flourish almost everywhere, as do also the smaller, but most valuable kinds, as the strawberry, the raspberry, gooseberry, currants, and, above all, our native grapes, the sweet and prolific Scuppernong, and the rich Catawba, which mature well, besides some of foreign origin. When to these are added the fish, with which our eastern waters abound through the year, but are alive in the spring—our naval stores and lumber, our marls, our minerals, gold, silver, copper, and especially the extensive and rich deposits of iron ore, and the coals, one may confidently ask, is there any other country which contains or produces more or a greater diversity of things to sustain life or to bring money? And then let me enquire of you, North Carolinians, what better country do *you* want than your own? I hold it is good enough—too good, I am tempted to say, for sinful man. It requires only to be dressed and tilled to give nearly all we want on earth, and much for our fellow-man less happily situated. There may at some time be a stint below our usual abundance; but we need never fear a famine here while we work. Indeed, that calamity can hardly befall a country where maize—which we call Indian corn—grows to perfection. There is no record of a dearth, approaching famine, where the principal crop was maize, as it is here. Our climate and soil are so congenial to the other

cereals, that a failure of that crop from an unpropitious season is necessarily perceived in time to provide the others, or some of them, as a substitute.

Such is North Carolina! Here she is, and let any man say, who can, whether she be not in everything as she has now been held up to him. Then, why should any leave her? I trust the period of her people's deserting her and seeking—what they never found—a better place, is near its end, and that they will cleave to her, and exalt her by uniting in an effort to render her, by increased fertility, yet more teeming in her productions, and to embellish her with durable and tasteful habitations, gardens and lawns, with substantial farm houses, with orchards and every other thing that can make her beautiful in our eyes and fasten our affections on her. True, the soil is not what it once was, and our task is not merely to preserve fertility but in a great degree to restore that which has been more or less exhausted. We must not blame our ancestors too hastily or too severely, for the system under which the rich vegetable loam they found here was so used up. The labors and hardships of settling a wild country leave but little opportunity for more than preparing for cultivation and cropping such parts of the land as are absolutely necessary for maintaining the colony. Land was in plenty—timber an incumbrance and labor scarce and costly; so that in reality, it was cheaper, and the sounder economy in them to bring new fields with their exceeding superficial fertility into culture, rather than manure those which they had reduced by imperfect tillage and scourging cropping. Throughout America the land suffered by the exhausting operations of the settlers and their descendants for several generations; but that can only go on to a certain extent, and then it must stop. When getting to be so reduced as not to pay for cultivation, necessity forbids a further reduction of the soil and then the process of regeneration begins. At first it proceeds slowly; but every degree of improvement furnishes means for still greater, and accordingly it increases its pace, and by improved culture, manures, rotation of crops, and the like, it ends in a productiveness beyond its original capacity.

If not to the lowest, certainly to a very low, condition, much of the land, in the State, had been brought; and the time came, when, if improvement was ever to be made, it would be commenced. I use the expression "the time came" instead of "has come," because it is a joyful fact, that some persons in various parts of the State, many in some parts, have improved, and continue to improve their lands and increase their crops—profiting much therefrom in their fortunes and setting the rest of us examples by which we ought also to profit. We have all heard for some years past, that the era of improvement had begun in the great and wealthy county of Edgecombe; and I learn from unquestionable sources, that the intelligent and enterprising planters of that county have been rewarded by signal success. I do not propose to enter into a detail of their system further than to say, that it consists chiefly

in draining by ditches and embankments, making and applying composts, the use of guano and plaster of Paris, and the field-pea as an ameliorating crop, as well as food for stock. I advise everyone, however, who has the opportunity, by minute enquiries to obtain from those who have put this system into use detailed information respecting it; and I feel no hesitation in preferring a request to the planters of Edgecombe, as public-spirited gentlemen, to communicate through our agricultural periodicals, the history of their improvements, and their experiments—as well those in which they failed as those in which they succeeded, with all other matters which may be useful to their brethren in other sections.

In other parts of the country, with which I am more intimately acquainted, much improvement has been made, to my own knowledge. Of the counties ranging along our northern border, from Warren to Stokes, inclusive, I have had for about fifty years considerable knowledge. That was the principal region of the tobacco culture. According to the course of that culture, wherever it prevailed in our early annals, the country was cut down rapidly, cropped mercilessly, with a view to quantity rather than quality, then put into corn, and exhausted quickly and almost entirely. When I first knew it, and for a long time afterwards, there were abounding evidences of former fertility, and existing and sorrowful sterility. Corn and tobacco and oats were almost the only crops. But little wheat and no cultivated grasses were to be seen in the country. Warren and Granville bought the little flour they used from Orange wagons. Large tracts were disfigured by galls and frightful gullies, turned out as "oldfields," with broomstraw and old-field pines for their only vesture, instead of their stately, primitive forests, or rich crops for the use of man. This is a sad picture. But it is a true one; and there was more fact than figure in the saying by many whose work of destruction rendered that region so desolate, and who then abandoned it, that it was "old and worn out." Happily, some thought its condition not so hopeless, and, cherishing their attachment for the spots of their nativity, within these few years—since the time of river navigation and railroads began—set about repairing the ravages of former days. Do you suppose they were content with less crops, and therefore that they cultivated less land than before, leaving a larger area to natural recovery by rest? That was not their course. They did not give up the culture of tobacco, but greatly increased it, and corn also; and they added to their rotation, wheat, when so much more easily carried to market. But they greatly increased the collection and application of manures from the stables, and the cattle yards, with considerable additions of the concentrated manures obtained from abroad, and protected the land from washing by judicious hillside trenching and more thorough plowing. The result has been that many old-fields have been reclaimed and brought into cultivation, the lands generally much increased in fertility, and of course, in actual and market

value in the like proportion while the production has, probably, doubled in quantity and value in all the range of counties mentioned. Such examples are honorable to those who set them, and useful to others, who desire to improve. For that reason I have thought it proper thus to signalize them, as I would gladly do others, which may, and I hope do exist, were I as well aware of them: contenting myself with adding only, that I think I see the dawn of a better day in the county of my own residence and those contiguous. For our present purpose, it is sufficient that we can hence learn that the effects of the most injudicious and destructive cropping may be repaired by good husbandry, in the use of fertilizers saved on the farm, and others, which are becoming better known and more obtainable than formerly; and thus all the outlay will be more than reimbursed at a short day by the increase of products, besides enhancing the value of real estate. Thus will our agriculture be rendered as pleasing and as profitable as that of the most favored portions of the earth.

Then let me say once more to you, men of North Carolina, stick to her, and make her what she can and ought to be. For you and your sons she will yield a rich harvest; to some "thirtyfold, some sixtyfold, and some an hundredfold," according to the skill and diligence with which the tillage of the good ground is done.

The nature of the labor employed in our agriculture is the next subject for our consideration. It is a most important element in the cost, amount, and value of production. I very frankly avow the opinion, that our mixed labor of free white men of European origin and of slaves of the African race, is as well adapted to the public and private ends of our agriculture as any other could be—making our cultivation not less thorough, cheap and productive than it would be, if carried on by the whites alone, and far more so than the blacks by themselves would make it; and, therefore, that it has a beneficial influence on the prosperity of the country, and the physical and moral state of both races, rendering both better and happier than either would be here, without the other. Of course, I am not about entering into that controversy which has connected itself with the contentions of sectional factions, struggling for political power. It is unnecessary that I should, for every one is aware, I believe, of the nature of the controversy and the motives of the parties to it. It is one of the conservative effects of slavery to impress on us a deep conviction of the inestimable value of the Union, and a profound reverence for the Constitution which created it; and hence we habitually cherish a good feeling as of brethren, towards our fellow-citizens of every State, and any deed or word tending to impair the perpetuity of the Union and the efficiency of the Constitution and the laws passed in accordance with it, or to alienate the affections of the people of the different States from each other, is seen with impatience and frowned on with indignation. Indeed, if there were anything in slavery or the interests connected with it incompatible

with that fundamental law, I doubt not that our people would willingly abide by that sacred instrument, though it should cut off a right hand or pluck out a right eye. But there will be no occasion for a display of our loyalty in that respect, since the Constitution clearly recognizes our slavery, sustains the rights of ownership, and enforces the duty of service; and I am persuaded, that the obligation of those provisions and their execution will be ultimately pronounced and carried out by those on whom the Constitution itself confers the authority. My purpose now, however, is merely to maintain that slavery here is favorable to the interests of agriculture in point of economy and profit, and not unwholesome to the moral and social condition of each race. In support of the first part of the proposition, a decisive argument is furnished by the fact that the amount and value of the productions of slave labor in this country exceeds those of similar productions, nay, of all other agricultural productions, of an equal number of men in any other country, as far as they can be ascertained. In some localities, indeed, and in respect to some articles of great value, the production would cease or nearly cease, with slavery; since the blacks by the constitutions inherited from their African ancestors, can labor, without detriment, under degrees of heat, moisture, and exposure, which are found to be fatal to the whites, whose systems are better adapted to different conditions of the atmosphere. In truth, if the free men in those States in which slavery prevails be allowed credit for common sense and the capacity to understand their own wants and interests, the utility of the employment of slave labor and its productiveness are established beyond controversy, simply by the fact, that it is done. Men who are thoroughly versed in the practical operation of any institution, certainly will not, to their own prejudice, uphold it from generation to generation, and cling the closer to it as by its natural extension it becomes more and more destructive. If it be said that the continuance of slavery does not prove its utility to the Commonwealth, because it was continued of necessity and would have been, however impolitic it might be found, we must own some force in the suggestion, by itself, since at all times after its introduction it would have been difficult to get rid of it, and that difficulty has been continually increasing. It was much easier for those who now condemn so strenuously our toleration of slavery, to capture and enslave the helpless Africans and bring them here, than for us, without crime yet more heinous, to renounce our dominion over them and turn them loose to their own discretion and self-destruction. Their fate would soon be that of our native savages or the enfranchised blacks of the West Indies, the miserable victims of idleness, want, drunkenness, and other debaucheries. But the argument goes only to show that we would have done right—even though enforced thereto by the necessity spoken of—in still holding those people in bondage. It is far from showing that slavery would not have been and ought not to have been maintained, though there had been no such hypothetical necessity for

doing so. Furthermore, there are numerous facts to prove a clear opinion to the contrary in every class of our population. When did any man, for example, leave North Carolina in order to get clear of his slaves or of slavery? We have, indeed, a respectable and peaceful religious society—less numerous than formerly—who are forbidden by an article in their creed from holding men in slavery. Even they never warred or contended against this institution here, nor sought to seduce or spirit away their neighbor's slaves; but like the quiet and Christian men they professed to be, they left us and immigrated chiefly to the States of the North-West, in which slavery did not exist. With that slight exception, the public sentiment is so generally satisfied with the existence of slavery and its propriety here, that it may properly be called universal. Some men have emancipated some or all of their slaves by sending them to other States. But I know not of an instance in which the former owner went with them, or left North Carolina because other owners would not follow their example. On the contrary, when our slaveholders remove, they carry their slaves with them further south where slavery is, if possible, more firmly fixed than here, because they expect the labor of the slaves to be more productive. Besides, there are many inhabitants of this State who do not hold slaves, some from choice and some from inability to purchase them, and nevertheless, they are content to abide among us and our slaves. And it is also true, that even when those men migrate, much the larger part of them likewise go to the south of us in the thick of slavery, because they hope to make a greater profit from their own exertions. These facts, which cannot be denied, will bear reflection, and furnish evidence sufficient to satisfy any fair mind that there is an unanimous conviction of our people that slavery as it exists here, is neither unprofitable, nor impolitic, nor unwholesome. For certainly, though slaveholders, we may claim to possess as clear understandings, and as clear consciences as generally fall to the lot of other men.

It would indeed, be otherwise, if it were true, as supposed or set forth by some, that slavery degrades free labor, and consequently, that our population are too proud or too lazy to work, and become, especially slave-owners, dissolute and profligate in morals, as well as atrocious tyrants. But that is not true—not at all true; and there never was a greater mistake than to suppose it true. It cannot but excite a smile in us, who know the contrary so well, when we are told that white men do not work here, and that they do not because it is considered disgraceful. Why, there is not a country on earth in which honest labor and diligence in business in all classes and conditions, is considered more respectable, or more respected. We, like every other people, have the idle and the vicious amongst us. But they are chiefly those who have the least connexion with slaves, and particularly those employed in agriculture, and are to be found, without means, lounging about cities and villages. Many most independent farmers, who own slaves, but

not enough to make their superintendence full employment, work, they and their sons, with their slaves; and it is sure, that no one here ever treated them or thought of them as disgraced by it. Indeed, every one, who by intelligence, integrity, and industry, provides for himself and his household either in the field or at the forge, or any other mechanical pursuit, is as highly respected here, as in every other well ordered community; and many of them are of great and useful influence in society.

It is a mistake, too, equally notable, that slaveholders are above or exempt from the cares and the business of life; and it is a gross calumny to represent them as the ruthless and relentless tyrants, of whom some persons delight to draw overcharged and exaggerated caricatures. Although the labor of a large slaveholder is not manual, yet it is not the less engrossing and onerous; and the feelings between masters and their slaves in the great bulk of our population is kindly on the part of the former, and affectionately faithful on the part of the latter. Slavery, indeed, is not a pure and unmixed good. Nor is anything that is human. There are instances of cruel and devilish masters, and of turbulent and refractory slaves, who cannot be controlled and brought into subjection but by extraordinary severity. But these are exceptions. Great severity in masters is as much opposed to the usages of our people as to the sentiment of the age, and, indeed, to the interest of the master. Moderation in the punishment of dependents is founded in nature; and unjust, excessive, and barbarous cruelty is not to be presumed, but quite the contrary. The meek man who led the Israelites through the wilderness, and legislated for them by inspiration, understood this better than those who paint us so frightfully, without knowing much about us. In treating of the different degrees of homicide, he had regard to the known motives of the human heart, and thereon founded the presumption, that the slaying of a slave by the master, is by misadventure, "because he is his money," unless it should be rebuked by such excess in the degree or duration of the infliction as to make him "die under his hand," and thus evince that discipline was a pretence, and the killing of designed malignity or wanton brutality. I appeal to everyone, if our experience is not in accordance with the divine statute. The same motive induces the master to be observant of the health and morals of his slaves; to care for them, and provide for them; to restrain them from baneful excesses, and employ them in moderate, though steady labor. That this is the course—the established habit of the slaveholding portion of the country, is plainly to be deduced from an increase in the numbers of our slave population beyond the ratio of natural increase in the population of any other nation; which could only arise from the abundant supply of the necessities and comforts of life, and a contented state of mind.

But the interest of the owner is not the only security to the slave for humane treatment; there is a stronger tie between them. Often born on the same plantation, and bred together, they have a perfect knowl-

edge of each other, and a mutual attachment. Protection and provision are the offices of the master, and in return the slave yields devoted obedience and fidelity of service; so that they seldom part but from necessity. The comfort, cheerfulness, and happiness of the slave should be, and generally is, the study of the master; and every Christian master rejoices over the soul of his slave saved, as of a brother, and allows of his attendance on the ministry of God's word and sacraments, in any church of his choice in his vicinity. The condition of a slave denies to him, indeed, opportunities of education sufficient for searching the Scriptures for himself, and working thereout his own conversion; but God forbid that should be necessary to salvation! It is not; for to the poor and the unlettered the Christian graces are promised and given in an especial manner, because they have less pride of intellect, more simplicity of faith, and more singleness of heart; and among the slaves of this country there are many exemplary Christians. Indeed, slavery in America has not only done more for the civilization and enjoyments of the African race than all other causes, but it has brought more of them into the Christian fold than all the missions to that benighted continent from the Advent to this day have, or, probably, those for centuries to come would, excepting only the recent Colonies of blacks on the western coast of Africa, by which one may hope and believe that under divine direction the lights of civilization and the knowledge of the true God may be reflected back on that whole land. Such are some of the beneficial effects on that race of their connexion with us. Upon the slaveholder the impressions are not less distinctly durable, nor less beneficial. He is habitually a man of employment. As in military life, he must train his troop to their duties, lay out their work, and superintend its execution; and by a mild and just, though firm discipline, reward and punish according to their deserts; and he must never fail in sympathy with them in regard to innocent enjoyments at proper times, and their needs in sickness and in health. Sometimes matters, very trivial in themselves, have exceedingly great effect in improving the slave and uniting him to his owner. I know a gentleman, one of the most successful planters, who produced a marked change for the better among his slaves, by the small boon of a cheap looking-glass for each of their quarters. Another bound his people to him by a devoted affection, by joining with solemnity in their processions at the burial of the dead, in a graveyard, which he had protected by a plain post and plank enclosure.

It is a great error in those who do not know our slavery, to confound authority in the private relations, though it be that of a slave-owner, with the absolute power of a prince on a throne. A political despot is separated from his subjects. He knows them not, nor loves them. He sympathises with none of them but their positions and feelings are in constant hostility. But authority in domestic life, though not necessarily, is naturally considerate, mild, easy to be entreated, and tends to

an elevation in sentiment in the superior which generates a humane tenderness for those in his power, and renders him regardful alike of the duty and the dignity of his position. It is only when the authority is disputed and resisted, that a conflict occurs; and the slaves, if kept to themselves, unprompted from without, will seldom give occasion in that way for rigor. Why should this propitious state of things be changed? Why should any wish a change? Especially, why should persons who have no concern in it, who are not of us, and know not what they do, officiously interfere in a relation so entirely domestic and delicate? We know that our slaves are generally humble, obedient, quiet and a contented and cheerful race of laborers. Scattered over the plantations in rural occupations, they are never riotous or dangerous, as the same number of uneducated working men have often been in other parts of our country. Slaves are no part of this State, with no political power, and seek no violent or sudden changes in the law or policy of the country; and where slavery exists labor and capital never come in conflict, because they are in the same hands, and operate in harmony. It is not, then, a blot upon our laws, nor a stain on our morals, nor a blight upon our land. A signal instance of its beneficial political influence just occurs to me, to which I cannot refrain from asking your attention. The sad fate of the Indian tribes in the territories, now forming the United States, is familiar to every one. With the exception of a few small remnants, seated among the whites, as a degraded caste, in one or two of the Northern States, all belonging to that region are extinct. They had no separate property, and therefore they never engaged in the pursuits of the civil life, and could not be civilized. They were killed up in wars with the whites, or, at their instigation, with each other, deprived of their land, and, consequently, with reduced supplies of food by the diminution of game, and brutalised by intemperance, they wasted away while they were yet savages. The same fate befell most of those at the South, and from the same causes. But there are exceptions worthy of grave consideration. There were five large tribes on this side of the Mississippi—the Cherokees, the Creeks, the Chickasaws, Choctaws, and the Seminoles. The two former were nearer to us, and indeed, part of their territory was within our borders. Therefore we are more familiar with them, and I will speak only of them, though I believe the same is true of all of them. The Cherokees and Creeks suffered losses of land and people like the other tribes; but they differed from them in one circumstance, and only one, from which, however, most important consequences resulted. It so happened, that, while yet respectable in strength, they got, in some way—by capture or purchase—some negro slaves. Immediately there was a change in their whole polity, which preserved their existence, and increased their numbers and their wealth. The acquisition of slaves gave them the idea of property in individuals, and in order to make the labor of the slaves beneficial, a qualified property in the lands

occupied by each Indian, and worked by his slaves, was recognized by the nation, and the pursuits and arts of civilised life were established among them; farms were extended, dwellings erected, traffic practised, clothes worn after the fashion of the whites, schools and churches opened, and the red man became as the white man in his occupations, property, education and religion. And now those tribes form intelligent and thriving people beyond the Mississippi, with enlarged knowledge, property, and power; with a printed statute book, with a legislative body, and regular tribunals of justice. Such works hath American slavery wrought upon those tribes! Is that a reproach to it? And is it not marvellous that, still, it should be pursued by persons having no knowledge of its practical operation, under a phrensy against slavery in the abstract, fatally bent on its restriction and destruction, though they thereby should desolate our fields, desecrate our altars, and cause the blood of both races of our people to flow in rivers? Such philanthropy is both fanciful and ferocious, and must gall and irritate, and may, to a certain extent, alarm some. But I believe we need not apprehend much danger to our personal rights or political institutions. Occasionally demagogues may sway popular or legislative majorities against us. But it can only be for a season, and a short season. For, in every part of our beloved country there are men, and, I trust, many men, of sound heads and sound hearts, who are as able as we to understand and explain the constitution, and calculate the value of the Union as justly. Such men must have great influence in society, however it may be constituted, and will assuredly instruct, persuade, and lead back the masses to a due regard for the Constitutional rights of their fellow-citizens—not less their fellow-citizens because living far apart—for multitudes, proverbially prone to change, never do so more readily, than when, under the guidance of wise and good men, they can retreat from an extreme wrong, and escape from the domination of those who dishonestly led them into it. The very excess of the error ensures its speedy perception, and a more perfect reaction. I believe we shall be one people again in good feeling; and therefore I cherish the spirit of brotherhood even towards those who may now seem to hold it in the least respect; and in that I only sympathise, I am sure, with the great bulk of my fellow-citizens at home.

On the remaining point, on which the interests of agriculture, and, indeed, of all other employments depend—namely, the facility of transportation, I have to offer to all North Carolinians heart-felt congratulations. The carriage of bulky and cheap articles long distances in wagons over bad roads was a great drawback on the profits of capital and labor for a long time here. Some relief in particular parts of the State was derived from even the imperfect improvement made in the navigation for boats on a few of our rivers. But it was far below the wants and demands of the people; and afterwards resort was had to Railroads. The wonders worked by steam, and railways are indeed

astonishing throughout the world. In no part of it can they be more requisite or beneficial than in this State, the extent of which, and the want of navigable waters at only a short distance from the sea, rendered them indispensable. Every one, therefore, ought to commend the legislative policy in providing them, and in extending them from time to time as the funds of the State may be found adequate. It will not, I trust, be going out of the way, while on this subject, to say a word in honor of the memory of a great and good man, who first presented the utility and construction of Railroads to the notice and patronage of this State; I allude to the Rev. Dr. Joseph Caldwell, the late eminent and zealous president of the University. Upwards of thirty years ago he visited Europe on the business of the College, and there saw such roads in use; and soon after his return, I remember, he published a series of essays under the signature of "Carlton," in a newspaper printed in this city, explaining the practicability of their construction and earnestly urging a central one from Buncombe to Beaufort. The novelty of the subject and the dread of the expense, operating upon timid counsels, prevented his suggestion from being then adopted. But it is honorable to his sagacity that at the late session of the legislature charters were granted for completing a line of Railroad on the very route recommended by him, when probably it was unknown or had been forgotten by the acting generation of legislators, that he had ever advocated the measure. I shall be pardoned for desiring to rescue from oblivion for a brief space longer his early service in a cause now so generally and justly advocated, and of such surpassing importance.

I have thus endeavored to lay before you the resources and advantages enjoyed by North Carolina, and her capacity to supply the wants of man, and satisfy his reasonable desires for accumulation and the higher enjoyments of both laboring and educated and more refined men. It has been done without setting up any claim for her, which I do not believe to be well founded, or any statement in which I do not expect your concurrence. In truth I have said nothing new, and I have not sought so much to impart information as to excite reflection on what you already know. For we take no note of things that we see every day, and it is a more common fault not to make a proper use of knowledge than it is not to possess it; to fail in duty, not because we are ignorant of it, but because we are indifferent to it. My purpose has been to present to you, with much plainness of speech, things that none can deny and are fully known among us. You know that all these things are true. If they be, let them make their impress on our minds and hearts, that we may be duly sensible of, and thankful for, the goodly bounties of health, competence, and wealth, which may be derived from the agriculture and other occupations of North Carolina.

I am quite sensible that I have performed most defectively the task set for myself. After the lapse of more than thirty years since I engaged in public discussion, I ought not to have undertaken it, and regret

that I did so, especially as this address has been hastily prepared under many disadvantages. I beseech your forgiveness, and will make the best reparation now in my power, by promising not to offend in the same way again; and, as I have very nearly arrived at the scriptural limit of man's life, I think I may, in conclusion, safely make the promise. I cannot close, however, without asking you once more to cleave to North Carolina. Stay in her, fertilize her, till her, cherish her rising manufactures, extend her railways, encourage and endow her schools and colleges, sustain her institutions, develop her resources, promote knowledge, virtue and religion throughout her borders, stimulate State pride, and exalt her to renown: And may the blessing of Almighty God be upon each one of you, and on all North Carolina, and make her good name and her fair fame endless!

THOMAS RUFFIN'S SUBSTITUTE ORDINANCE OF SEPARATION FROM THE UNION, 1861¹

Judge Ruffin in order to give time to amend the preamble of Mr. Badger's proposition, submitted the following resolutions. He favored the immediate secession of the State, but thought the ordinance should be accompanied by the reasons which led to its passage:

Resolved by the Convention, That by reason of various illegal, unconstitutional, oppressive and tyrannical acts of the Government of the United States of America, and of unjust and injurious acts of divers of the Northern non-slaveholding States, it is the settled sense of the people of this State that they cannot longer live in peace and security in the Union heretofore existing under the Constitution of the United States, and therefore, that this State ought of necessity, immediately and finally separate from the other States; and that a committee be appointed by the President to bring in a proper ordinance for that purpose; and *resolved further*, that all propositions touching that object be referred to said committee.

Resolved further, That the safety and vital interests of the people of this State and the common defense of the South, depend essentially upon her becoming, without delay a member of the Confederate States of America; and that the same committee bring in a proper ordinance for that purpose also, in conformity with the Constitution of the said Confederate States.

Judge Ruffin moved to lay the two propositions on the table, with a view to offering the foregoing.

SYNOPSIS OF A SPEECH BY THOMAS RUFFIN IN THE CONVENTION OF 1861-1862²

Judge Ruffin concurred with Mr. Gilmer. In the course of his remarks he alluded to the fatal step taken by the Convention in assuming the payment of the Confederate tax. He thought the people in better condition to pay that tax now than they would be hereafter. Besides,

¹ State Journal, May 22, 1861.

² State Journal, March 5, 1862.

the State, having to pay it, would be bound to collect it on the subjects taxed for State purposes, and millions of property taxed by the Confederate Government—such as bank stock, State bonds, etc., would escape taxation, and the whole burden would fall chiefly on land and negroes. But he continued, the war must be supported. Every calamity in war was not a conquest. It became the people not to be cast down. A constant and resolute heart would carry the war to a successful termination. There was nothing for us but victory. If, he said, with warmth, I had the writing of the constitution, I never would consent to join again with the people of the North (Cheers). We *had* a constitution, he continued, but they used it to our destruction. The South had been made to bleed at every pore for the last thirty years. She had ample reason to divide the Union long ago; but he for one felt then that it was better to bear the ills we had than fly to others we knew not of. The step was now taken, however; and he had not been taken by surprise. He well knew the fight would cost both blood and treasure—every man must have been prepared for that. All now was at stake. There was no constitution left to fight for. Article after article had been broken till there was nothing left. Yield and go back to the North! he exclaimed, I would rather give my last drop of blood than again join them. (Cheers.) This is the spirit, said he, in which this war must be conducted; and so long as this spirit shall last they can never conquer us. Go back to them! Never, never. (Cheers.) Let us, then, go into the means to raise this money. I go for the war to crucifixion. I go for the eight per cent bonds. (Cheers.)

LAST WILL AND TESTAMENT OF THOMAS RUFFIN

I, Thomas Ruffin of Alamance County, in North Carolina, do make and publish this paper writing as my last will and Testament.

In the first place, I gave some years ago to my daughter Catharine Roulhac the house and lots in Hillsboro on which she resides as an advancement, but have not yet conveyed them; therefore, I devise the same to her in fee simple.

In the second place, Mr. Paul C. Cameron purchased from me several years past the piece and parcel of land adjoining the town of Hillsboro on which he resides, being the residue of the land conveyed to me by George Pollock, which I have not heretofore conveyed to William Cain or the said Cameron, and paid me therefor, but I have not yet made him a deed; therefore I do hereby devise the same to the said Paul C. Cameron in fee simple: and I gave to the said Cameron a piece of land adjoining the lands of Pratt, Heartt, and others in Orange County, including the whole tract I then conveyed except a parcel which I had sold and conveyed to Pratt, which gift was by way of advance-

ment to my daughter Anne, wife of said Cameron, but I have not yet conveyed it, now I complete said gift. I do hereby devise the said land to the said Paul C. Cameron in fee simple.

At the beginning of the present public troubles, my property was sufficient for providing a comfortable competency for my wife and children, yet in the present state of things I find it out of my power to set a value on the different parts of my estates and property on which I can base a satisfactory distribution among them specifically, or in value. Hence I think it best under the circumstances for my children, that what I have should be kept in a consolidated form in the hands of their mother (who has been as good and affectionate a wife and mother as husband or children ever had) so that she shall succeed me as the head of the family; and moreover because it is, at all events, my wish and purpose to provide for her according to my ability such a subsistence and endowment as will insure to her the means of living as she has been accustomed or as near it as may be and also to be bountiful to her children and their families according to their necessities and her judgment and discretion; and therefore I have advisedly determined to give and I do hereby give to my fond and cherished wife, Anne M. Ruffin, in fee simple and absolute property at law and in equity the whole residue of my estates and effects rights and credits, meaning hereby to leave nothing undisposed of, but to vest the whole residue legal and equitable in my wife, who deserves all the affections and honor I have ever felt for her or could feel. But I hereby confirm the gifts of certain slaves which I have heretofore made: that is, to my son Peter Browne of the girl Anny; to my son-in-law John W. Brodnax of the girl Patty; to my son John K. of the man Peter; and to my son-in-law Edmund Ruffin, Jr. of the woman Susan and her child. I appoint my sons, Sterling, Peter Browne, and Thomas and my sons-in-law Paul Cameron and John W. Brodnax the executors of this will, expressing the hope and expectation that they will claim no pecuniary compensation for any service they may or can render to so excellent a mother. In testimony whereof I do hereby set my hand to this writing all in my own handwriting, this 16th day of April, 1865.

THOMAS RUFFIN.

Signed, made and
published by the testator
in our presence and attested
by us at his request and
in his presence.

WALTER GWYNN
HENRY GWYNN
D. A. MONTGOMERY.

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LETTERS WRITTEN BY THOMAS RUFFIN TO ARCHIBALD D. MURPHEY

<i>Place</i>	<i>Date</i>
Hillsboro, N. C.....	May 4, 1821
Lawrenceville, N. C.....	September 15, 1825
Hillsboro, N. C.....	December 8, 1827

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Caswell Court House, N. C.....	January 27, 1808
Lenox Castle, N. C.....	July 24, 1808
Hermitage, N. C.....	May 19, 1810
	September 29, 1810
Hermitage, N. C.....	January 1, 1811
Greensboro, N. C.....	April 24, 1811
	October 5, 1811
Raleigh, N. C.....	July 11, 1812
Haw River, N. C.....	June 9, 1814
Raleigh, N. C.....	November 24, 1814
Raleigh, N. C.....	December 1, 1814
Wentworth, N. C.....	June 1, 1815
	October 6, 1815
Haw River, N. C.....	September 28, 1816
Raleigh, N. C.....	December 22, 1816
Hillsboro, N. C.....	February 15, 1817
Salisbury, N. C.....	April 11, 1817
Pittsboro, N. C.....	September 25, 1817
Greensboro, N. C.....	October 20, 1817
Raleigh, N. C.....	November 17, 1817
Raleigh, N. C.....	November 30, 1817
Pittsboro, N. C.....	March 26, 1818
Raleigh, N. C.....	November 16, 1818
Raleigh, N. C.....	November 19, 1818
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Haw River, N. C.....	February 25, 1819
Fayetteville, N. C.....	March 29, 1819
Columbus Co., N. C.....	April 8, 1819
Fayetteville, N. C.....	April 25, 1819
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Haw River, N. C.....	January 15, 1820
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